

POLICY PAPER ON OPTIONS FOR FUTURE FORM OF GOVERNMENT AND DECENTRALISATION

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ACRONYMS

COCA	Central Administration for Control and Audit
COM	Council of Ministers in Yemen (Cabinet)
DEO	District Executive Office
DLDSP	Decentralization and Local Development Support Program
DMC	District (Council) Management Committee
GCC	Gulf Cooperation Council
GCS	Governorate Executive Organ for Civil Service
GEO	Governorate Executive Office
GMC	Governorate (Council) Management Committee
GOY	Government of Yemen
GS	General Secretary
HBC	High Budget Committee
HRD	Human Resource Development
LA	Local Authorities
LAL	Local Authority Law
LC	Local Council
MOE	Ministry of Education
MOF	Ministry of Finance
MOLA	Ministry of Local Administration
MOPIC	Ministry of Planning and International Cooperation
MOPWH	Ministry of Public Works and Highways
MOCSAR	Ministry of Civil Service & Administrative Reform
NGO	Non-Governmental Organisation
PFM	Public Finance Management
PSA	Production Share Agreement
SCER	Supreme Commission for Elections and Referendum
SDF	Social Development Fund
SOE	State Owned Enterprises
SME	Small and Medium Enterprises
TOR	Terms of Reference
UNDP	United Nations Development Programme

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Disclaimer: The views in this paper are those of the authors and do not reflect the views of the Ministry of Local Administration or the United Nations Development Programme

EXECUTIVE SUMMARY

1. Yemen is at an important cross-road in its history. With a Government of National Reconciliation in place as a consequence of the signing of the peace agreement facilitated by the Gulf Cooperation Council (GCC), the country is in the process of laying the foundations for a robust, viable State that serves a vibrant, expectant Society. Efforts towards this end are enveloped in myriad challenges that run the entire spectrum of political, economic and social issues. With poverty high¹ and financial resources to combat it, low², a State institutional infrastructure that is as fragile as the relations between different segments of society are tenuous, Yemen is in search of lasting solutions to both perennial and emerging challenges. The call for change is driven as much by demography—majority of the population is estimated to be less than 25 years of age³, 70% of whom are unemployed⁴; annual urban population growth rate projected to be 4.6%⁵--as it is by demands for equal and more equitable economic opportunity and improved delivery of and access to basic services. Considerable variation in inter-regional poverty, lingering questions over allocative efficiency of financial resources, a vulnerability to both exogenous economic shocks, and endogenous risks associated with long periods of political insecurity, reliance on the extractive industry for revenues that also fuels regional tensions, and a dire humanitarian and food security crisis that has made half the Yemeni population food-insecure⁶ caused by prolonged conflict, internal displacement, consistently high influx of refugees, up from around 78,000 in 2009 to just under 100,000 in 2012⁷, all contribute to the weightiness of the challenge.

2. The extent to which the Yemeni publics' expectations can be met and their aspirations for change realised, depends on the manner in which the State's institutional structures, mandates, processes, powers and its relations with other stakeholders in Society are shaped. The Peace Agreement lays out a roadmap for transition, and an imperative aspect of this roadmap relates to the structure of government and decentralisation in Yemen.

¹ 34.8% as per the Yemen Poverty Assessment 2007, jointly carried out by GoY, WB and UNDP

² Estimates for financial resources needed to meet the MDGs by 2010-2015 run to the value of \$45b. The resources mobilised and spent between 2006-2009 was \$3.6b, inclusive of foreign assistance.

³ World Statistics Pocketbook, UN Statistics Division 2010

⁴ Integrated Social Cohesion Project, UNDP 2011

⁵ World Statistics Pocketbook, UN Statistics Division 2010

⁶ WFP, "Food security survey to reveal alarming levels of severe hunger in Yemen" (14 March 2012)

⁷ UNHCR, 2012

OBJECTIVES, METHODOLOGY AND ASSUMPTIONS

Objectives

- Improve the understanding of national and local stakeholders about the main forms of political regimes and decentralization systems, and the practical experiences of their application in various country contexts;
- Provide analysis of the main forms of government in the Yemeni context, including division of legislative, executive and judiciary responsibilities and their economic, political and institutional implications
- Identify the actions required for implementation of each option together with an approximate timelines

Methodology and Framework

- Secondary research
- Primary research and analysis using:
 - the *results of a rapid assessment survey* ;
 - *Field visits* to three Governorates;
 - *Key informant and stakeholder interviews* with over 150 people;
 - *Problem tree and Stakeholder analysis*
- Principles followed: Inclusion; Equity; Accountability and Voice; Responsiveness; Sustainability

Assumptions and Limitations

- Our proposals are embedded within the notion of national unity.
- The National Dialogue will be a fully inclusive forum.
- Paucity of time did not allow for detailed assessments of fiscal capacity at the district level, although we were able to determine the fiscal situation at the Governorate level.
- We were hampered in our work by the lack of access to certain critical data—such as data on civil servant deployment across the country.
- We were unable to analyse issues related to restructuring of the armed forces, due to shortage of time.

ISSUES, VIEWS AND VOICES FROM THE FIELD

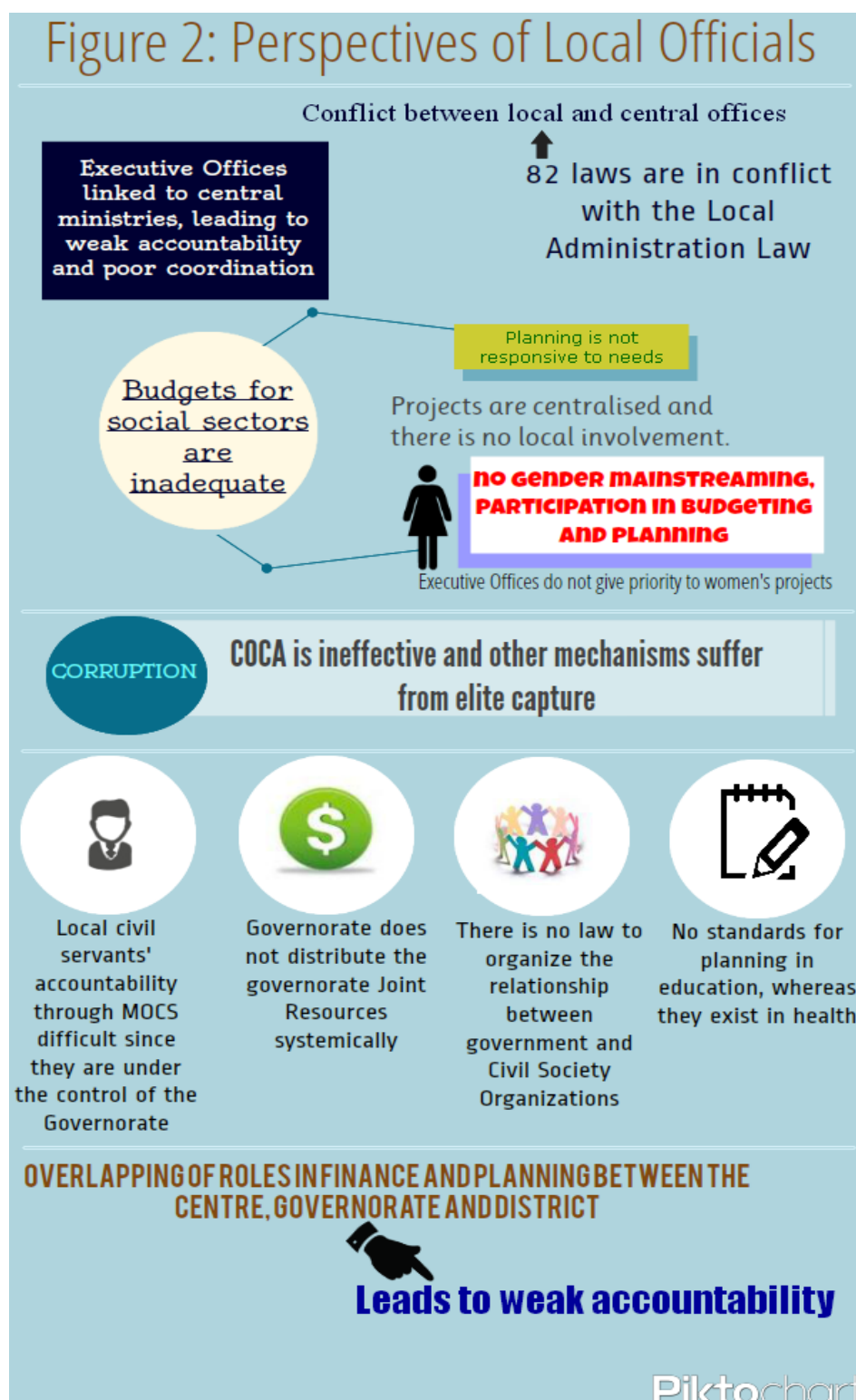
- a. Political vision appears to be somewhat hazy.... but there was common ground on several issues



- b.and Federalism and decentralisation are viewed as mutually exclusive

Several political parties and other stakeholders' view federalism and decentralisation as 'either/or' option. This is reflected in their general tendency to be scant on details when it came to decentralisation and to focus on the overall political structure.

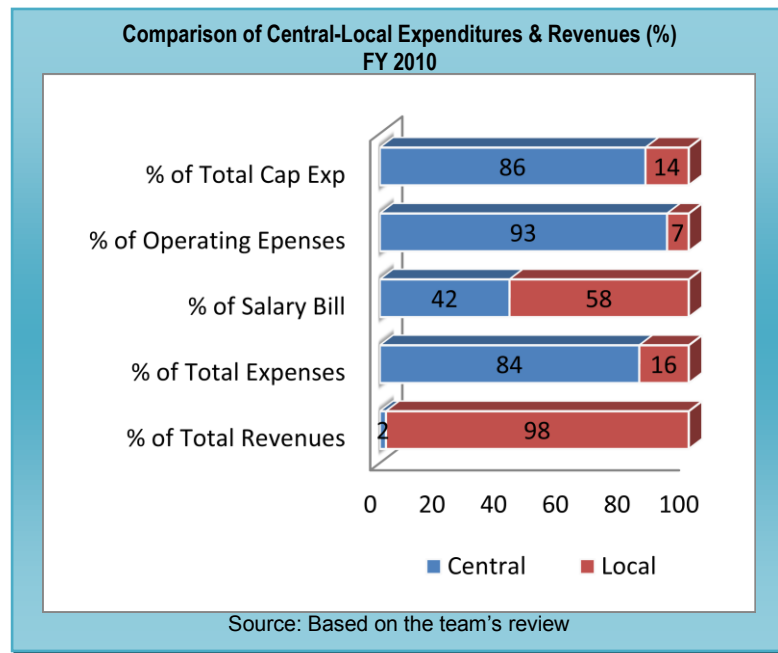
- c. Central bureaucracy sits on the fence.....but the local level bureaucracy demands empowerment



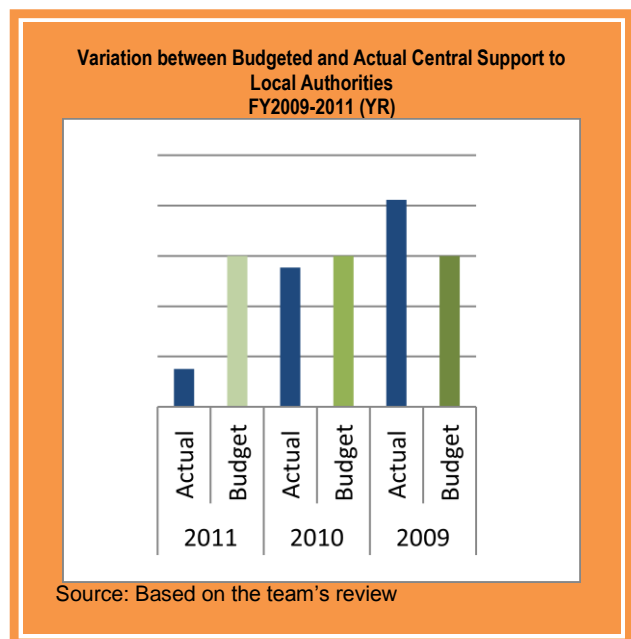
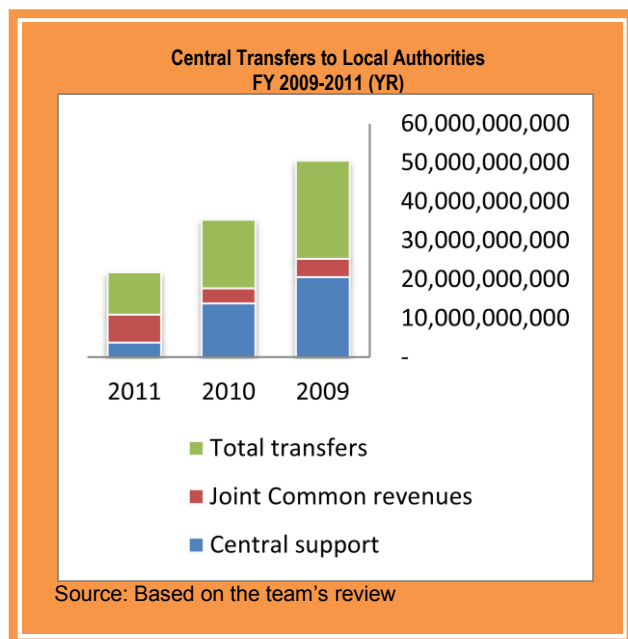
- d. Roles and responsibilities lack clarity...and lead to weak accountability

- g. Call for special status to some regions based mainly on economic potential.....but privatisation is viewed somewhat negatively**
- h. Resource management is key.....but resources are scarce and not aligned with responsibilities.**

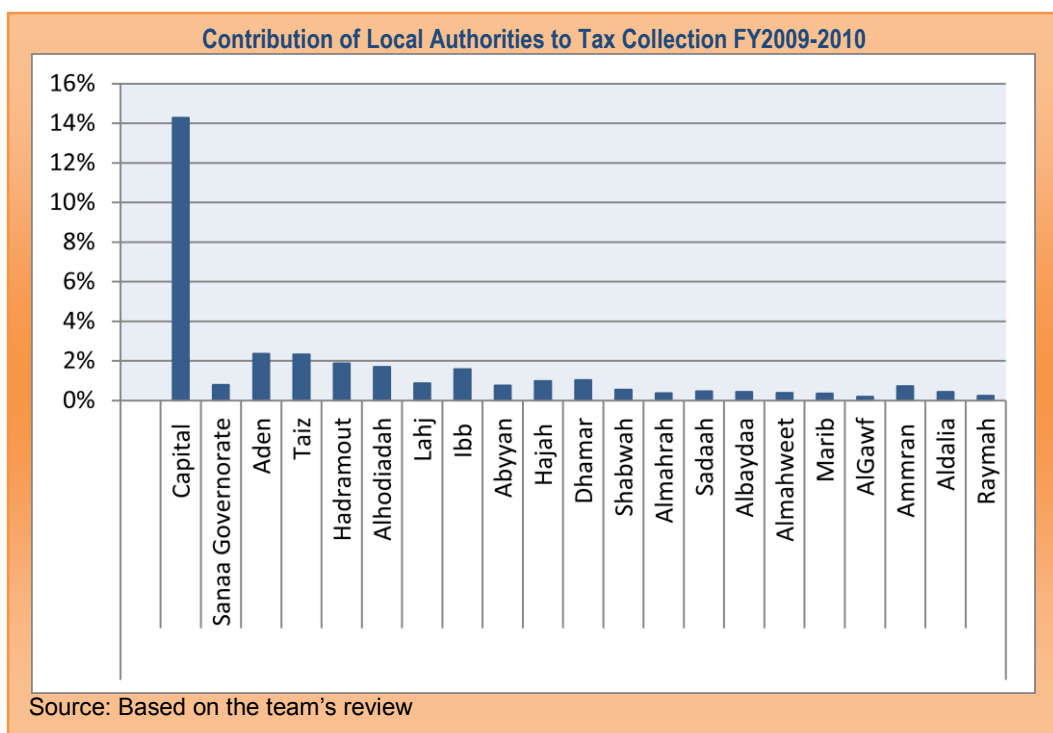




- i. **Inter-governmental relations are weak.....as is donor coordination**
- j. **There is diversity in the 'South' Viewpoint...and the need for finding equilibrium for the pendulum or extreme options**
- k. **The resource curse needs to be addressed....but the fiscal space is restricted**



- g. **Administrative Division is problematic...and does not reflect the economic viability of regions**



h. Yemen appears to be caught in the State Capability Trap

CAUGHT IN THE STATE CAPABILITY TRAP			
INCORRECT ASSUMPTIONS	FORM OVER FUNCTION	UNREALISTIC EXPECTATIONS	INFORMAL NETWORKS PREVAIL
<p>Local Authorities are fully empowered</p> <p>There is clarity in the roles and responsibilities of elected representatives and bureaucrats</p> <p>There is adequate fiscal space at all levels</p>	<p>Local Councils exist but with limited powers</p> <p>The fiscal distribution is not independent and adequately transparent</p> <p>Central government exercises great control over local planning, budgeting and implementation</p>	<p>Despite administrative and fiscal limitations, the local authorities will deliver better services</p> <p>Local Authorities budgets are consumed by salaries with little resources for Operations & Maintenance, yet development demands are vast</p>	<p>Writ of the government is severely compromised in large areas of the country</p> <p>Substantial political patronage systems undermine State legitimacy</p>

PRINCIPLES FOLLOWED IN DEVELOPING THE OPTIONS

1. **Autonomy:** In each of the options, we have kept the principle of granting political, administrative and fiscal autonomy paramount. The opportunities for grant of political autonomy are higher under Options 2 and 3, but even under Option 1 (Reforming the Unitary State) the extent of administrative and fiscal autonomy can be greatly enhanced. Under Option 2 (Federal State with two tiers of government) the Provincial tier of Government enjoys complete autonomy in matters delineated under its jurisdiction by the Constitution; in Option 3 (Federal State with three tiers of government), each level or tier of government is fully autonomous, including the local governments, as prescribed under the different legislative lists under the Constitution.
2. **Equal Participation and Representation:** To ensure that all segments of society and all regions of the country have equal rights in terms of participation and representation in different organs of government, we have proposed arrangements that are prescribed by and protected under the Constitution. For example, in Options 2 and 3 we propose Parliamentary, bi-cameral structures that ensure that representation of all regions are ensured through their presence in the Upper Houses at the Federal Level; the Council of National Cohesion has majority members from the regions/provinces so that they can provide input to issues of national importance, have a forum for resolution of disputes; there are quotas proposed for women, disabled, minorities in parliament and civil service; civil society and communities are made part of formal institutions through the Council of Community Leaders, Citizen's Budgeting, Citizen's Advisory Committees; elections are proposed on proportional representation system so that the regions with smaller populations are not penalised for their smaller numbers but instead get a chance to have an equal voice in Parliament; for demarcation of the areas to form provinces or local governments, we propose a Demarcation Commission that has membership from all stakeholders; nomination of different stakeholders including elected representatives, community leaders, private sector on different forums, including the National Economic Council.
3. **Inclusiveness and Equity:** To address this critical issue that is at the heart of the North-South divide, we have proposed several institutional arrangements:

the establishment of an independent Finance Commission that decides impartially on the resources distribution, using multiple criteria that take into account the dispersion of population, variation in service delivery costs and enabling improved access to services; quotas of seats for women to narrow the gender equity gaps; proposal to share the natural resource revenues with citizens through direct cash transfers under the 50-50-50 Plan.

4. **Subsidiarity:** The principle of subsidiarity states that the governmental structure should devolved powers and functions to levels that can perform them with greater efficiency and effectiveness. Our proposals for autonomy to the regions and local governments and for devolution of political, administrative and fiscal powers is based on this principle. For example, at present, Governorates perform municipal functions while Districts perform the more difficult tasks of delivery of a wide range of health services. Our proposals aim to strike a balance by devolving powers as far as possible to lower levels of government, giving provinces/regions complete autonomy in terms of decision making over key functions like planning, budgeting and monitoring, making them independent in terms of revenue generation and retention and in relation to appointments, postings and transfers of civil servants.
5. **Transparency and Accountability:** Governmental systems function best when there are appropriate arrangements and institutions for ensuring transparency and accountability. Our proposals aim to strengthen existing institutions such as the formal justice systems of courts, SNACC, and COCA by making them Constitutional bodies with legal protection and complete autonomy over their resources—financial and human—and their operations. Moreover, we propose new institutions such as that of the Mohtasib to redress public grievances; Citizen-led forums for social accountability through instruments such as Citizen Report Cards; and focusing on legislative accountability by both the Upper and Lower Houses (National Assembly and Senate) in both Federal and Provincial Governments, Public Accounts Committee; Information Commissioner and Office of Open Government to ensure citizens' rights to information are secured.

POLICY OPTION 1: REFORMING THE UNITARY STATE

KEY FEATURES

Clarifying Legal Framework and Intergovernmental Relations

- The Constitution be amended so as to remove the contradiction in its provisions, particularly Article 144, to prevent interference of the central government in local affairs, and Article 146, to clarify the role of local councils to be consistent with Article 4
- Re-defining the functions of the local councils in Article 146 to make the local councils powerful in supervision and monitoring
- Security officials of the administrative units must be under the supervision and monitoring of local councils.
- A Local Authorities Commission be established
- Establish an independent Fiscal Distribution Committee

Strengthening Role of Local Councils

- The Executive Officers at the Governorate and District levels are made administratively accountable to the respective Local Councils
- Powers of Local Councils to approve budgets, plans and projects at their respective levels be enhanced

Enhancing Fiscal Space and Improving Planning Processes for Improving Services

- More equitable sharing of Joint Resources at Governorate level
- Review the fiscal distribution formula to include inverse population density and reward improvements in fiscal marksmanship
- Introduce Conditional Grants for capacity building
- The system of tenders and procurement should also be reformed
- Local budgets should be approved by Local Councils

Improving Accountability

- Social accountability processes be strengthened
- Strengthen the role of the judiciary to handle cases against local level corruption
- Strengthen Local Council oversight through establishment and operationalisation of Council Committees for monitoring
- Establish a formal public grievance redress mechanism, including the office of an Ombudsman/Mohtasib

POLICY OPTION 2: FEDERAL STATE WITH TWO-TIERED STRUCTURE FEDERAL AND PROVINCIAL

KEY FEATURES

Tiers of Government

- Federal, Provincial Governments
- Number of provinces and their geographical boundaries needs to be determined as indicated in subsequent sections.
- The Constitution would not recognise Local Authorities as legal tiers of government, but will make it incumbent upon all Provincial Governments to establish Local Authorities
- Local Authorities to comprise Districts (Urban/City District or *Medina* and Rural District or *Muhafadah*), Towns (*Muntaqa*) and Village levels (*Mudirya*), whose number and geographical distribution would be determined according to defined criteria, determined by the Demarcation Commission

Structure of Government

- Parliamentary, bi-cameral form of Federal governmental structure. The Parliament at either level would consist of a Lower House and an Upper House .
- President of the Federation will be the Head of State.
- The Prime Minister will be the Chief Executive Officer and Head of Government.
- At the Provincial level, the Federal structure would be mirrored, with a Provincial Assembly/Lower House and a Provincial Senate/Upper House
- The Provincial Chief Minister will be the Chief Executive Officer
- There will be a Governor of each Province, who will serve as a representative of the State
- Local Authorities at the District level will have Local Councils, headed by an elected Mayor.

Elections

- President to be elected through an electoral college of Federal Upper and Lower Houses
- Prime Minister elected from within the elected members of the National Assembly
- National Assembly members elected directly; Senate members through an electoral college comprising of National and Provincial Assemblies
- Provincial Assembly members elected directly and Provincial Senate members through an electoral college comprising the members of the Provincial Assembly and the members of the District Local Councils.
- The Provincial Chief Minister elected from amongst the members of the Provincial Assembly
- Governor of each Province elected through an electoral college comprising the members of the Provincial Assembly and the Provincial Senate
- Local Authorities to have directly elected Local Councils, with Mayors and Deputy Mayors elected from among the members of the Local Councils.
- At least 30% seats reserved for women and at least 5% seats for minorities.

Administrative Division

- **Federal Territories** comprising Sana'a Capital City; seaports islands; districts not included in Provinces; and Charter Cities
- **Provinces**, with the number to be determined by a Demarcation Commission

Integrating Informal Institutions

- Establish a Council of Community Leaders at the Federal and Provincial levels
- Give legal coverage to customary law by establishing Customary Law Courts
- Establish Mediation Committees in every District
- Include private sector representatives in the National Economic Council of Yemen
- Establish a Provincial and District Citizens' Advisory Committee (CAC) in every District
- Institute a Citizen's Budget process

Division of Powers

- Two lists, the Federal Legislative List and the Concurrent List, define the subjects assigned and the powers of each tier of Government.
- Aside from those matters falling exclusively under the Federal Legislative List and the Concurrent Legislative List, every other matter or subject falls within the jurisdiction of the Provinces
- Since Local Authorities are not Constitutionally recognised third tiers of Government, their functions, powers and roles to be determined by each Province.

Public Grievance Redress and Accountability

- **Establish the Office of the *Mohtasib*** to redress public grievances relating to mal-administration.
- **Establish the Office of the Information Commissioner** to protect citizens' rights to access to information
- **Strengthen accountability through:** Focusing on Legislative Accountability through establishing Public Accounts Committees and Cabinet Committee on Public Accountability; establishing Anti Corruption Courts; legislating a Whistleblowers Act to encourage provision of information on corruption without fear of retribution;
- **Strengthen Social Accountability** through Citizens' Budgets and Citizens' Witness in procurement processes
- **Enhance ambient accountability** through 'on the spot' and 'real time' instruments and processes (e.g. hotlines in public spaces to report corruption)

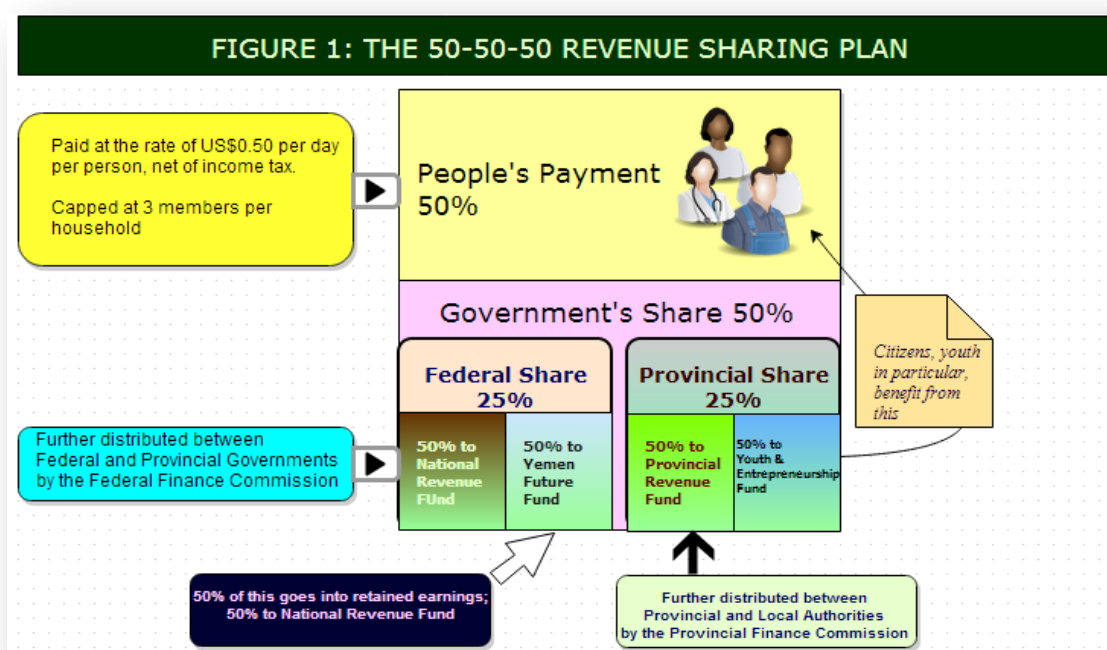
FORMAL JUSTICE STRUCTURE

PROPOSED FORMAL JUSTICE SYSTEM		
Institution	Composition	Jurisdiction/Functions/Powers
Supreme Judicial Council	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - The Chief Justice of the General Supreme Court - Federal Minister for Law - The Attorney General - Four representatives of the practicing legal professionals nominated by professional lawyers' associations, at least two of whom must be female - Four members of the National Assembly, nominated by the Speaker of the Assembly, at least two of which must be from the Opposition and at least one of whom must be female - Six members of the Federal Senate, nominated by the Speaker of the Senate, at least three of which must be from the Opposition and at least two of whom must be female - Three legal experts/academics, nominated by the President, at least one of whom must be female - Registrar of the Constitutional Supreme Court as Non-voting Member/Secretary 	<ul style="list-style-type: none"> - Advise the Prime Minister of the Federal Government and the President of the Federation on justice sector policies, standards and oversight, as well as capacity building of judicial officers - Advise the Prime Minister of the Federal Government on the appointment of judges of the Constitutional Court, the General Supreme Court, the High Courts, the Specialty Courts and the Traditional and Customary Law Courts, as well as the Prosecutor General. Appointments in the Courts of Magistrates to be made by the Provincial Governments directly, through a Provincial Judicial Service Commission for this purpose.
Constitutional Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - Ten other judges of the Constitutional Supreme Court 	<ul style="list-style-type: none"> - Exclusive jurisdiction over Constitutional matters, and issues connected with decisions on constitutional matters - Decide disputes between Federal and Provincial Governments concerning the Constitutional status, powers or functions of any of those organs of State - Decide on the constitutionality of any Bill - Decide on the constitutionality of any amendment to the Constitution - Determine whether any public official(s) has/have failed to fulfil Constitutional obligations
General Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the General Supreme Court - Ten other judges of the General Supreme Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters defined in Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of any Court other than the Constitutional Supreme Court
High Courts	<ul style="list-style-type: none"> - Headed by the Chief Justice of the High Court, to be established in every Province/Iqleem - Ten other judges of the High Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters that are not assigned to any other Court by Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of the Speciality, Customary or Magistrate's Courts unless otherwise stated in any Act of Parliament
Specialty Courts	<ul style="list-style-type: none"> - One Specialty Court each for Banking, Taxation, Revenue, Intellectual Property and Anti-Corruption at Federal and Provincial Government levels - Each Court comprising a bench of at least 5 Judges 	<ul style="list-style-type: none"> - Jurisdiction over respective subject matters only as defined in Acts of Parliament
Traditional & Customary Law Courts	<ul style="list-style-type: none"> - Headed by the Head Judge of the Traditional & Customary Law Court - At least three other judges in each Traditional & Customary Law Court 	<ul style="list-style-type: none"> - Settlement of disputes under customary law and traditional practice
District Courts of Magistrates	<ul style="list-style-type: none"> - Headed by the Chief District Judge - Judicial Magistrates as may be appointed by the Provincial Government through the Provincial Judicial Service Commission, but no less than at least three in each District 	<ul style="list-style-type: none"> - Jurisdiction as defined in Acts of Parliament

MANAGEMENT OF THE RESOURCE CURSE

It is proposed to manage the issue of equitable, transparent distribution of the revenues from the extractive industry by: first, by **instituting a 50-50-50 Revenue sharing plan** (see below) whereby citizens get direct cash payments and the funds transferred to Federal and Provincial governments are earmarked for certain purposes; two, **providing a one-time Royalty Payment** to Provinces from where majority of oil is extracted. This payment will be based on a formula to be devised by the National Finance Commission; third, by **providing Individual Royalties to landowners** whose land would be acquired under a Land Acquisition Act and compensation determined through fair market valuation; fourth, imposition of **a Business4Community (B4C) Tax** at the rate of 3% on net earnings of all companies working in the extractive industries. This tax would be collected by the Province, would be eligible for use only in the districts where the extraction or exploration is carried out and only be used in the education and health sectors; and fifth, the National Extractive Industry Committee would establish and maintain a **Natural Resources Portal** on which all data and information related to natural resource contracts, licenses and updated information on production, revenues, exports, taxes collected and status of distribution of resources, royalties etc. would be updated. There would also be an Online Complaint system whereby any citizen would be able to file a complaint or report any suspected corruption and these complaints would be redirected in real time to SNACC.

FISCAL AND FINANCIAL AUTONOMY



3. **Create an enabling fiscal empowerment** by aligning subjects for which the two orders of Government are responsible, with the power to raise taxes and. In this respect, we propose the following:

INDICATIVE LIST OF TAX AND NON-TAX REVENUE GENERATION POWERS			
Government	Taxes	Non-Tax Revenue Sources	
Federal	<ul style="list-style-type: none"> - Personal Income Tax - Corporate Tax - Capital Gains Tax - General Sales Tax - Highways Tax - Zakat for Federal Areas - Taxes on Telecommunication - Taxes on Electricity - Taxes on Aviation - Taxes on Tobacco - Wealth Tax 	<ul style="list-style-type: none"> - Customs Duties - Federal Excise Duties - Import Duty - Export Duty - Fees on licensing, registration for subjects under the Federal Legislative List 	
Province	<ul style="list-style-type: none"> - Tax on Services - Agriculture Tax - Immovable Property Tax - Tax on Transfer of Property - Business4Community Tax - Zakat for Provinces - Municipal Taxes - Water Tax - Urban Development Tax - Motor Vehicle Registration Tax - Hotel Tax - Entertainment Tax - Roads Tax - Business Registration Tax - Provincial Road Tax 	<ul style="list-style-type: none"> - Land Revenue - Stamp Duties - Education Cess, Fee - Health Cess, Fee - Natural Resource Licensing Fee - Property Transfer Fee 	<ul style="list-style-type: none"> • Shops and kiosk rates • Abattoir fees • Marriage, birth, and death registration fees • Market/motor park fees • Sanitation fees • Customary, burial ground, and religious places permits • Signboard/advertisement fees • Fee for fairs, agricultural shows, cattle fairs, industrial exhibitions, tournaments and other public events • Fee for approval of building plans and erection and re-erection of buildings • Fee for licenses or permits and penalties or fines for violation of the licensing rules • Maintenance of Works fee • Entertainment Fee

4. **Mechanism for Fiscal Transfers** We propose that all fiscal transfers from Federal to Provincial levels and from Province to Local Authorities be effected through establishment of a Finance Commission of Yemen at the Federal level and the Provincial Finance Commission at the Provincial levels. Both Commissions will be Constitutional bodies, independent, have necessary expertise and be accountable to the Parliament (see box below).

COMPOSITION AND TERMS OF REFERENCE OF FINANCE COMMISSIONS	
A. FINANCE COMMISSION OF YEMEN	
Composition	
Federal Minister for Finance	Chair
Provincial Ministers for Finance	Members
Renowned Public Finance Experts/Economists*	Chair
President Federation of Chamber of Commerce & Industry	Member
Representative of the Council of Elders/Tribal Leaders	Member
Federal Secretary/Head of Ministry of Finance	Member/Secretary
Terms of Reference	
The Finance Commission of Yemen will make recommendations to the Federal Parliament as regards:	
<ol style="list-style-type: none"> 1. The vertical and horizontal distribution between the Federation and the Provinces of the net proceeds of the Yemen National Revenue Fund 2. The making of grants-in-aid by the Federal Government to the Provincial Governments 3. Review the implementation of the Award made by the Commission 4. The exercise by the Federal Government and the Provincial Governments of the borrowing powers conferred on them 5. Any other matter relating to finance referred to the Commission by the Federal Parliament. 	
B. PROVINCIAL FINANCE COMMISSION	
Composition	
Provincial Minister for Finance	Chair
Five representatives of Local Authorities	Members
Three renowned Public Finance Experts/Economists*	Chair
President of Provincial Federation of Chamber of Commerce & Industry	Member
Representative of the Council of Elders/Tribal Leaders	Member
Provincial Secretary/Head of Ministry of Finance	Member/Secretary
Terms of Reference	
The Provincial Finance Commission will make recommendations to the Provincial Parliament as regards:	
<ol style="list-style-type: none"> 1. The vertical and horizontal distribution between the Provinces and the Local Authorities, of the net proceeds of the Provincial Revenue Fund 2. The making of grants-in-aid by the Provincial Government to the Local Authorities 3. Review the implementation of the Award made by the Commission 4. The exercise by the Provincial Governments of the borrowing powers conferred on them 5. Any other matter relating to finance referred to the Commission by the Provincial Parliament 	
*Two each nominated by the Federal Government and Provincial Government, At least one of these must be female	

5. **Equitable and Rules Based Fiscal Distribution** We propose that the fiscal distribution be transparent, predictable, equitable and relatively simple to administer. The mechanism would thus have to be one that :

- a. **Addresses fiscal needs** We propose that this be achieved by using the following criteria:
 - i. Inverse income distribution: As a measure of disparities in income across the country.

- ii. Inverse population density: This enables variation in cost of service delivery to be adjusted into the distribution of finances.
 - iii. Deprivation Index This provides a measure of need by evaluating a range of socio-economic indicators. We propose to use a few key indicators including: % of population with access to clean drinking water; % of Maternal Mortality Rate; % of Infant Mortality Rate; % of Net Enrolment Rate; electricity consumption or % of population with access to electricity
- b. **Rewards fiscal effort and fiscal efficiency** This can be achieved by incentivising improvements made by constituent units relating to:
- i. Growth in Own Source Revenue (OSR) as a % of Total Revenues.
 - ii. Development of a Fiscal Effort Index
 - iii. Improving budgetary discipline and accuracy
- c. **Provides for an equalisation mechanism** This would take the form of an equalisation grant, which are unconditional, general purpose transfers intended to equalise fiscal conditions among constituent units.

6. **Empowering Provinces to Raise Loans** We propose that the Constitution grants the Federal and Provincial Governments the right to raise commercial loans, locally and internationally, against their respective consolidated funds (National Revenue Fund and Provincial Revenue Fund respectively), subject to conditions, limits and processes determined by the Federal Government.

7. **Ensuring Fiscal Responsibility** through a Fiscal Responsibility Act that defines the limits and measures of fiscal responsibility, including but not limited to: capping budgetary deficits and reducing the public debt to GDP ratio (usually 60%); defining *ways and means* limits with the Central Bank; protecting minimum pro-poor investments as a % of GDP (usually 4%); and limiting issuance of sovereign guarantees to a maximum of 2% of GDP.

8. **Enhancement in Financial Powers** Including the full powers of approving financial plans, budgets, projects and investments in subjects under their exclusive jurisdiction i.e. other than the subjects enumerated under the Federal Legislative List and the Concurrent List. In the case of the subjects under the Concurrent List, the division of financial powers would be determined through Intergovernmental Agreements on Fiscal and Financial Relations (IGAFR), which would clearly spell out the triggers for reference to the Federal Government by Provincial Governments in relation to approval of plans and budgets etc.

9. ***Institutional arrangements for revenue collection*** We propose that while the Constitution should provide for establishment of independent revenue authorities in every Province, it may provide for the Federal Tax Authority to perform agency functions for the Provinces as regards revenue collection, till such time as the Provinces establish their own Revenue Authorities.

10. ***Localize Zakat*** Instead of the current model of pooling Zakat collections at the Governorate level, we propose that Zakat should be collected and retained at the Provincial and District levels where it is collected to create a more efficient, Zakat-investment nexus. Furthermore, we propose that the levy of Zakat on private and non-profit organisations (Trusts, Charities, NGOs etc.) that have more than one office or branches in the country, should be made at the location of each of its offices, branches or operations and not at the Head Office level only; this would allow Zakat collections to benefit the areas where the operations of organisations is taking place.

INTERGOVERNMENTAL RELATIONS

11. ***Creation of a number of Constitutional forums*** including a:

- i. Council for National Cohesion to serve as the principal forum for intergovernmental coordination, cooperation and dispute resolution.
- ii. Establishment of Inter-Sectoral, Inter-Ministerial Forums In order to improve coordination, sharing of information, knowledge and experiences, the Constitution may provide for Ministerial forums organised along thematic lines.

12. ***Intergovernmental Relations Agreements*** These could be developed for various sectors and help regulate the relations between the Federal and Provincial Governments by defining the purpose, process and plans for policy cohesion, consistency and coordination, while protecting autonomy.

13. ***Establishing Key Constitutional Bodies and Offices*** We propose that the following institutions be Constitutional bodies or Offices (positions):

- Constitutional Supreme Court	- General Supreme Court
- Supreme Judicial Council	- Election Commission of Yemen
- Planning Commission of Yemen	- National Economic Council of Yemen
- National Human Rights Commission of Yemen	- COCA and its Chairperson
- SNACC and its Chairperson	- Controller General of Accounts
- Governor of the Central Bank of Yemen	- Federal Ombudsman
	- Finance Commission of Provinces
- Finance Commission of Yemen	- Council of National Cohesion
	- Higher Education Commission of Yemen

14. **Other Measures for Improving Intergovernmental Relations** With a view to promote trust and assist State Building and Peace Building Efforts, we propose the following measures:

- Expedite current efforts to establish the Transitional Justice institutions, including the Commission of Inquiry and Commission for Reconciliation and Justice.
- Putting in place an Affirmative Action provision in the Constitution for citizens of the backward, underdeveloped regions; women; minorities; and the disabled in the form of quotas in Parliaments and Local Councils, employment in the civil service and the armed forces; and judiciary.
- Establishing Intergovernmental Relations Departments at Federal and Provincial levels, to serve as the administrative arm for coordination.
- Establishment of Sectoral Parliamentary Caucus which would allow the Standing, Special, Select and other Parliamentary Committees formed at the Federal and Provincial Levels to interact with each other on a regular basis.

CIVIL SERVICE STRUCTURE

OVERVIEW OF THE PROPOSED CIVIL SERVICE STRUCTURE		
	Type of Service	
	Federal	Provincial
Who appoints	Federal Public Service Commission	Provincial Public Service Commission
Which services	<ul style="list-style-type: none"> ▪ Federal Executive Service ▪ Federal Accounts Service ▪ Federal Revenue Service ▪ Federal Information Service ▪ Federal Police Service ▪ Foreign Service ▪ Land Administration Service ▪ Municipal Management Service ▪ Prosecution Service - Technical Services: <i>Engineering Service; Health Service; ICT; Education Service; Finance Service; Economists Service; Legal Service</i> 	<ul style="list-style-type: none"> ▪ Provincial Executive Service ▪ Provincial Police Service ▪ Information Management Service ▪ Accounting Service ▪ Revenue Service ▪ Land Administration Service ▪ Municipal Management Service ▪ Prosecution Service ▪ Technical Services: <i>Engineering Service; Health Service; ICT; Education Service; Finance Service; Economists Service; Legal Service</i>
Sharing Formula	<ul style="list-style-type: none"> ▪ Provincial Secretary Positions: 65% Federal Executive Service; 35% Provincial Executive Service ▪ Provincial Executive Positions Below the Secretary Position: 50% Federal Executive Service and 50% Provincial Executive Service ▪ Provincial Head of Police Service Positions: 65% Federal Police Service; 35% Provincial Police Service ▪ Provincial Police Positions Below the Head of Police Position: 50% Federal Police Service and 50% Provincial Police Service 	
Fast Track Stream	<ul style="list-style-type: none"> ▪ Commercial, Economic and Trade Counsellors in Yemen's Foreign Missions. ▪ Positions in the WTO and specific UN Committees and Organisations (e.g. UNDESA). ▪ Chief Economist of the Planning Commission of Yemen. ▪ Chief Economist of the Provincial Planning Commissions. ▪ CEO positions in State Owned Enterprises, whether at Federal or Provincial level. 	
Affirmative Action Program	<ul style="list-style-type: none"> ▪ <u>Quotas for women</u>: At least 10% of positions <i>at all</i> levels to be filled by female candidates. ▪ <u>Quotas for Candidates from under-represented and underdeveloped regions</u>: 5% ▪ <u>Quotas for Minorities and Disabled</u>: At least 2% of positions to be filled by candidates from minority communities and with disabilities. 	
Encadrement	Various positions encadred for the National Executive Service, the Police Service and the Foreign Service	

POLICY OPTION 3: FEDERAL STATE WITH THREE-TIERED STRUCTURE FEDERAL, PROVINCIAL AND LOCAL GOVERNMENTS

KEY FEATURES

Tiers of Government

- Federal, Provincial and Local Governments
- Number of provinces and local governments and their geographical boundaries to be determined by a Demarcation Commission
- The Constitution define sthe division of powers of all tiers of Government and enumerate subjects to be dealt with by them
- The Local Governments would comprise of Districts, Towns and Village Councils. The Districts would be divided in terms of urban and rural districts, with Towns formed within the urban districts and village councils within the rural districts.

Structure of Government

- Parliamentary, bi-cameral form of Federal governmental structure. The Parliament at each level would consist of a Lower House and an Upper House .
- President of the Federation will be the Head of State.
- The Prime Minister will be the Chief Executive Officer and Head of Government.
- At the Provincial level, the Federal structure would be mirrored, with a Provincial Assembly/Lower House and a Provincial Senate/Upper House
- The Provincial Chief Minister will be the Chief Executive Officer
- There will be a Governor of each Province, who will serve as a representative of the State
- Local Governments at the District, Town and Village levels would have Local Councils, headed by an elected Mayor
- There may be administrative tiers below the Town and Village such as Wards and Union Councils respectively, but these would be purely administrative units with no legislative functions.

Elections

- President to be elected through an electoral college of Federal Upper and Lower Houses
- Prime Minister elected from within the elected members of the National Assembly
- National Assembly members elected directly; Senate members through an electoral college comprising of National and Provincial Assemblies
- Provincial Assembly members elected directly and Provincial Senate members through an electoral college comprising the members of the Provincial Assembly and the members of the District Local Councils.
- The Provincial Chief Minister elected from amongst the members of the Provincial Assembly
- Governor of each Province elected through an electoral college comprising the members of the Provincial Assembly and the Provincial Senate
- Local Governments to have directly elected Local Councils **CHECKKKKKK**
- Mayors and Deputy Mayors of each Local Council to be directly elected,
- At all tiers of government, at least 30% of seats reserved for women and at least 5% for minorities. At the Local Council level, this may be no less than 15% for women and at least one minority seat in every Council.

Administrative Division

- **Federal Territories** comprising Sana'a Capital City;seaports islands;districts not included in Provinces; and Charter Cities
- **Provinces**, with the number to be determined by a Demarcation Commission
- **Districts, Towns and Villages** The number, geographical composition and size of the districts, towns and villages are left to be determined by the Demarcation Commission.

Integrating Informal Institutions

- Establish a Council of Community Leaders at the Federal , Provincial and Local Government levels
- Give legal coverage to customary law by establishing Customary Law Courts
- Establish Mediation Committees in every District
- Include private sector representatives in the National Economic Council of Yemen
- Establish a Provincial and District Citizens' Advisory Committee (CAC) in every District
- Institute a Citizen's Budget process, including development of a Citizen's Budget by the District Citizens's Advisory Committee for consideration by the Local Council

Division of Powers

- Four legislative lists: a Federal Legislative List (which specifies subjects on which only the Federal Government can legislate); a Provincial Government Legislative List (specifying subjects on which only the Provincial Government can legislate); a Local Government Legislative List (specifying subjects on which only Local Governments can legislate); and a Concurrent Legislative List (which specifies subjects on which Federal, Provincial and Local Governments share the power to legislate).

Public Grievance Redress and Accountability

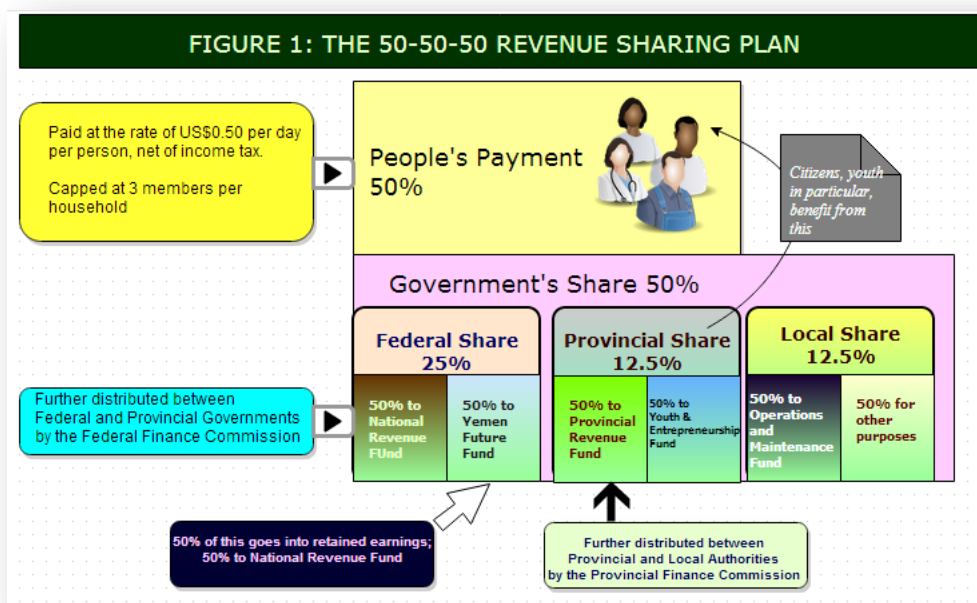
- **Establish the Office of the *Mohtasib*** to redress public grievances relating to mal-administration, including that of the *Local Government Mohtasib*
- **Local Governments to have an Office of Open Government** In order to protect citizen's fundamental right for access to information and as a means to ensuring transparency and progressing towards Open Government
- **Strengthen accountability through:** Focusing on Legislative Accountability through establishing Public Accounts Committees at all tiers of Government and Cabinet Committee on Public Accountability; establishing Anti Corruption Courts; legislating a Whistleblowers Act to encourage provision of information on corruption without fear of retribution;
- **Strengthen Social Accountability** through Citizens' Budgets and Citizens' Witness in procurement processes, as well as through Citizens' Report Cards
- **Enhance ambient accountability** through 'on the spot' and 'real time' instruments and processes (e.g. hotlines in public spaces to report corruption)

OVERVIEW OF DIVISION OF POWERS AND FUNCTIONS ACROSS GOVERNMENTAL TIERS					
SERVICE	CENTRAL	PROVINCE	LOCAL GOVERNMENT		
			DISTRICT	TOWN	VILLAGE
General administration					
Police	x	X	x		
Fire Protection			x	x	x
Civil Protection		x	x	x	x
Criminal justice	x	x			
Civil justice	x	x			
Civil status register	x				
Statistical Office	x	x			
Electoral register	x	x			
Education					
Pre-school	x	x	x		
Primary school	x	x	x		
Secondary school	x	x			
Vocational & technical	x	x			
Higher education	x	x			
Adult education	x	x			
Social welfare					
Kindergarten & nursery			x		
Family welfare services	x	x	x		
Welfare homes	x	x	x		
Social security	x	x	x		
Public health					
Primary care	x	x	x	x	x
Hospitals	x	x			
Health Protection	x	x	x	x	x
Housing and Town Planning					
Housing	x	x	x	x	x
Town planning			x	x	
Regional planning		x	x		
Transport					
Roads	x	x	x		
Transport	x	x	x		
Urban roads			x	x	
Urban rail	x				
Ports	x	x			
Airports	x	x	x	x	
Environment					
Water & sanitation			x	x	x
Refuse collection & disposal			x	x	x
Cemeteries and crematoria			x	x	x
Slaughter-houses			x	x	x
Environnemental protection	x	x	x	x	x
Consumer protection	x		x	x	x
Culture, leisure and sports					
Theatre & concerts	x	x			
Museums & libraries	x	x	x	x	
Parks & open spaces			x	x	x
Sports & leisure			x	x	x
Religious facilities			x	x	x
Utilities					
Gas services			x		
Water supply			x	x	x
Electricity	x	x	x	x	
Economic					
Agriculture, forests, fisheries	x	x			
Economic promotion	x	x	x	x	
Trade & industry	x	x	x	x	
Tourism	x	x	x	x	

FORMAL JUSTICE STRUCTURE

PROPOSED FORMAL JUSTICE SYSTEM		
Institution	Composition	Jurisdiction/Functions/Powers
Supreme Judicial Council	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - The Chief Justice of the General Supreme Court - Federal Minister for Law - The Attorney General - Four representatives of the practicing legal professional, nominated by professional lawyers associations, at least two of whom must be female - Four members of the National Assembly, nominated by the Speaker of the Assembly, at least two of which must be from the Opposition and at least one of whom must be female - Six members of the Federal Senate, nominated by the Speaker of the Senate, at least three of which must be from the Opposition and at least two of whom must be female - Three legal experts/academics, nominated by the President, at least one of whom must be female - Registrar of the Constitutional Supreme Court as Non-voting Member/Secretary 	<ul style="list-style-type: none"> - Advise the Prime Minister of the Federal Government and the President of the Federation on justice sector policies, standards and oversight, as well as capacity building of judicial officers - Advise the Prime Minister of the Federal Government on the appointment of judges of the Constitutional Court, the General Supreme Court, the High Courts, the Specialty Courts and the Traditional and Customary Law Courts, as well as the Prosecutor General. Appointments in the Courts of Magistrates to be made by the Provincial Governments directly, through a Provincial Judicial Service Commission for this purpose.
Constitutional Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - Ten other judges of the Constitutional Supreme Court 	<ul style="list-style-type: none"> - Exclusive jurisdiction over Constitutional matters, and issues connected with decisions on constitutional matters - Decide disputes between Federal and Provincial Governments concerning the Constitutional status, powers or functions of any of those organs of State - Decide on the constitutionality of any Bill - Decide on the constitutionality of any amendment to the Constitution - Determine whether any public official(s) has/have failed to fulfil Constitutional obligations
General Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the General Supreme Court - Ten other judges of the General Supreme Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters defined in Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of any Court other than the Constitutional Supreme Court
High Courts	<ul style="list-style-type: none"> - Headed by the Chief Justice of the High Court, to be established in every Province/Iqleem - Ten other judges of the High Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters that are not assigned to any other Court by Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of the Speciality, Customary or Magistrate's Courts unless otherwise stated in any Act of Parliament
Specialty Courts	<ul style="list-style-type: none"> - One Specialty Court each for Banking, Taxation, Revenue, Intellectual Property and Anti-Corruption at Federal and Provincial Government levels - <i>Municipal Courts at District and Town levels</i> - Each Court comprising a bench of at least 5 Judges, <i>except for Municipal Courts which may comprise not less than two Judges</i> - <i>The Municipal Courts would be structured as a Minor Offence Court, with recourse to Alternative Dispute Resolution where possible and desirable.</i> 	<ul style="list-style-type: none"> - Jurisdiction over respective subject matters only as defined in Acts of Parliament
Traditional & Customary Law Courts	<ul style="list-style-type: none"> - Headed by the Head Judge of the Traditional & Customary Law Court - At least three other judges in each Traditional & Customary Law Court 	<ul style="list-style-type: none"> - Determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice
District Courts of Magistrates	<ul style="list-style-type: none"> - Headed by the Chief District Judge - Judicial Magistrates as may be appointed by the Provincial Government through the Provincial Judicial Service Commission, but no less than at least three in each District 	<ul style="list-style-type: none"> - Jurisdiction as defined in Acts of Parliament

15. It is proposed to manage the issue of equitable, transparent distribution of the revenues from the extractive industry by: first, by ***instituting a 50-50-50 Revenue sharing plan*** (see below) whereby citizens get direct cash payments and the funds transferred to Federal and Provincial governments are earmarked for certain purposes; two, ***providing a one-time Royalty Payment*** to Provinces from where majority of oil is extracted. This payment will be based on a formula to be devised by the National Finance Commission; third, by ***providing Individual Royalties to landowners*** whose land would be acquired under a Land Acquisition Act and compensation determined through fair market valuation; fourth, imposition of ***a Business4Community (B4C) Tax*** at the rate of 3% on net earnings of all companies working in the extractive industries. This tax would be collected by the Province, would be eligible for use only in the districts where the extraction or exploration is carried out and only be used in the education and health sectors; fifth, the National Extractive Industry Committee would establish and maintain a ***Natural Resources Portal*** on which all information related to natural resource contracts, licenses and updated information on production, revenues, exports, taxes collected and status of distribution of resources, royalties etc. would be updated. There would also be an Online Complaint system whereby citizens would be able to file a complaint or report corruption directly to SNACC; sixth, ***Natural resources would be jointly owned by the Federal, Provincial and Local Governments***; decisions on grant of concessions, licensing and related contractual decisions as related to extractive industry to be made jointly through a National Extractive Industry Committee, established under an Act of Parliament.



FISCAL AND FINANCIAL AUTONOMY

16. In addition to the proposals made under Option 2 with regard to fiscal autonomy of constituent units, we propose the following for Option 3:

- a. **Create an enabling fiscal empowerment** by aligning subjects for which the three orders of Government are responsible, with the power to raise taxes. In this respect, we propose the following:

INDICATIVE LIST OF TAX AND NON-TAX REVENUE GENERATION POWERS		
Government	Taxes	Non-Tax Revenue Sources
Federal	<ul style="list-style-type: none"> - Personal Income Tax - Corporate Tax - Capital Gains Tax - General Sales Tax - Highways Tax - Zakat in Federal Areas - Taxes on Telecommunication - Taxes on Electricity - Taxes on Aviation - Taxes on Tobacco - Wealth Tax 	<ul style="list-style-type: none"> - Customs Duties - Federal Excise Duties - Import Duty - Export Duty - Fees on licensing, registration for subjects under the Federal Legislative List - Share from revenues from natural resources
Province	<ul style="list-style-type: none"> - Tax on Services - Agriculture Tax - Fisheries Tax - Qat Tax - Tax on Transfer of Property - Hotel Tax - Zakat in Provinces - Entertainment Tax - Roads Tax - Provincial Road Tax - Motor Vehicle Tax - Any other tax authorised by the Provincial Government 	<ul style="list-style-type: none"> - Education Cess, Fee - Health Cess, Fee - Natural Resource Licensing Fee - Property Transfer Fee - Fees for licences granted by the Provincial government. - Fees for specific services rendered by a Provincial government - Fees in respect of schools, colleges, and health facilities established or maintained by the Provincial Government. - Collection charges for recovery of tax on behalf of the government as prescribed - Toll on new Provincial roads, bridges, within the limits of a Province, other than national highways and roads - Share from revenues from natural resources

Local Government	<ul style="list-style-type: none"> - Immovable Property Tax - Business4Community Tax - Local Zakat Tax - Municipal Taxes - Water Tax - Urban Development Tax - Business Registration Tax - Tax on vehicles other than motor vehicles 	<ul style="list-style-type: none"> - Land Revenue - Stamp Duties - Health Cess, Fee - Property Transfer Fee - Fees for licences granted by the local government. - Fees for specific services rendered by a local government - Collection charges for recovery of tax on behalf of the government - Toll on new District roads, bridges, within the limits of a district, other than national and provincial highways and roads - Shops and kiosk rates - Abattoir fees - Marriage, birth, and death registration fees - Market/motor park fees - Sanitation fees - Customary, burial ground, and religious places permit - Signboard/advertisement fees - Fee for fairs, agricultural shows, cattle fairs, industrial exhibitions, tournaments and other public events - Fee for approval of building plans and erection and re-erection of buildings - Fee for licenses or permits and penalties or fines for violation of the licensing rules - Maintenance of Works fee - Entertainment Fee - Share from revenues from natural resources
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b. **Definition of the Consolidated Fund** The consolidated fund will be termed as the Yemen National Revenue Fund and will comprise but not be limited to:

- All Federal taxes, charges, levies, duties, rates and fees
- Royalties, fees and charges collected by the Federal agencies
- The proceeds from the government share of Oil and Gas exports and domestic sales
- Government shares of earnings from the SOEs
- Profits from the Central Bank
- Budget, grants and TA support from donor agencies.
- Proceeds from Treasury bills and Bonds
- Proceeds from sales of capital assets
- Income from the Yemen Future Fund (*Al Yemen Sunduq Al Mustaqbil*)

c. **Mechanism for Fiscal Transfers** We propose that all fiscal transfers from Federal to Provincial and Local Government levels be effected through establishment of a Finance Commission of Yemen at the Federal level, which would be a Constitutional body, independent, have necessary expertise and be accountable to the Parliament (see box below).

d. **Equitable and Rules Based Fiscal Distribution** We propose that the fiscal

COMPOSITION AND TERMS OF REFERENCE OF FINANCE COMMISSIONS	
Composition	
Federal Minister for Finance	Chair
Provincial Ministers for Finance	Members
Five representatives of Local Governments	Members
Renowned Public Finance Experts/Economists*	Chair
President Federation of Chamber of Commerce & Industry	Member
Two representative of the Council of Elders/Tribal Leaders	Member
Federal Secretary/Head of Ministry of Finance	Member/Secretary
Terms of Reference	
The Finance Commission of Yemen will make recommendations to the Federal Parliament as regards:	
<ol style="list-style-type: none"> 1. The vertical and horizontal distribution between the Federation, the Provinces and the Local Governments, of the net proceeds of the Yemen National Revenue Fund 2. The making of grants-in-aid by the Federal Government to the Provincial and Local Governments 3. Review the implementation of the Award made by the Commission 4. The exercise by the Federal, Provincial and Local Governments of the borrowing powers conferred on them 5. Any other matter relating to finance referred to the Commission by the Federal Parliament. 	
*Two each nominated by the Federal Government and Provincial Government, At least one of these must be female	

distribution be transparent, predictable, equitable and relatively simple to administer. The mechanism would thus have to be one that :

i. **Addresses fiscal needs** We propose that this be achieved by using the following criteria:

- Inverse income distribution As a measure of disparities in income across the country.
- Inverse population density: This enables variation in cost of service delivery to be adjusted into the distribution of finances.

- Deprivation Index This provides a measure of need by evaluating a range of socio-economic indicators. We propose to use a few key indicators including: % of population with access to clean drinking water; % of Maternal Mortality Rate; % of Infant Mortality Rate; % of Net Enrolment Rate; electricity consumption or % of population with access to electricity

- **Rewards fiscal effort and fiscal efficiency** This can be achieved by incentivising improvements made by constituent units relating to:
 - i. Growth in Own Source Revenue (OSR) as a % of Total Revenues. For this, the average OSR over a 5 year period would be used as the baseline. The base year from which point onwards the baseline is developed would be agreed between the constituent units.
 - ii. Development of a Fiscal Effort Index which allows for comparison across the country with respect to the revenues actually generated by constituent units with revenues that could have been generated calculated on the basis of fiscal capacity. Some of the more well-known measures for fiscal capacity are the Representative Tax System (RTS)⁸ and its subsequent variant, the Representative Revenue System (which basically expanded the tax base used for calculating the RTS and adding non-tax revenue bases used by subnational governments).
 - iii. Improving fiscal marksmanship By measuring improvements in closing the gaps between the budgetary allocations and budgetary expenditures, fiscal and budgetary discipline could be monitored and rewarded.

- **Provides for an equalisation mechanism** This would take the form of an equalisation grant, which are unconditional, general purpose transfers intended to equalise fiscal conditions among constituent units.

- **Empowering Provinces and Local Governments to Raise Loans** We propose that the Constitution grant the Federal, Provincial and Local Governments the right to raise commercial loans, locally and internationally, against their respective consolidated funds (National Revenue Fund, Provincial Revenue Fund and Local Revenue Fund respectively), and using instruments such as Municipal Bonds⁹ or Social Impact Bonds¹⁰. Raising of

⁸ Developed in 1962 by the Advisory Commission on Intergovernmental Relations (ACIR) in the US, to serve as a method for equalizing the distribution of federal funds. The system is a series of mathematical steps using 27 tax bases to measure fiscal capacity, leading to a national average tax system.

⁹ A municipal bond is a bond issued by a local government, or their agencies. Municipal bonds may be general obligations of the issuer or secured by specified revenues.

such debt would be subject to conditions, limits and processes for borrowing by Provinces and Local Governments, including a prohibition for borrowing for financing of recurrent expenditures.

- ***Ensuring Fiscal Responsibility*** through a Fiscal Responsibility Act define the limits and measures of fiscal responsibility, including but not limited to: capping budgetary deficits and reducing the public debt to GDP ratio (usually 60%); defining *ways and means* limits with the Central Bank; protecting minimum pro-poor investments as a % of GDP (usually 4%); and limiting issuance of sovereign guarantees to a maximum of 2% of GDP.
- ***Enhancement in Financial Powers*** Along with expenditure and revenue assignments and relevant fiscal autonomy, it is important for the constituent units have enhanced financial powers, including the full powers of approving financial plans, budgets, projects and investments in subjects under their exclusive jurisdiction i.e. other than the subjects enumerated under the Federal, Provincial and Local Government Legislative List and the Concurrent List. In other words, for subjects in their exclusive jurisdiction, the constituent units (Provinces) need not refer anything to the Federal Government. In the case of the subjects under the Concurrent List, the division of financial powers would be determined through Intergovernmental Agreements on Fiscal and Financial Relations (IGAFR), which would clearly spell out the triggers for reference to the Federal Government by Provincial and Local Governments in relation to approval of plans and budgets etc. All three tiers of Government would have full powers in relation to the approval of budgets and annual plans falling under their exclusive jurisdictions (as defined under the legislative lists). In cases of concurrent subjects or subjects where the constituent units and the Federation agree upon co-financing, projects of national strategic importance and in relation to the various funds (Social Development Fund, Cleaning Fund, Youth Fund, Agriculture Fund etc.), as well as any vertical programs which either the Federal Government plans to launch in a province or a local government or a Provincial Government in a Local Government, the launch of such vertical program would be subject to approval in the respective legislatures by a two-third majority. These strategic, vertical or Funds-driven programs would be implemented under an

¹⁰ This is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings.

Intergovernmental Agreement which would clearly specify the roles, responsibilities, outputs and outcomes, as well as the financial flows and contributions by each party.

- ***Institutional arrangements for revenue collection*** We propose that while the Constitution should provide for establishment of independent revenue authorities in every Province, it may provide for the Federal Tax Authority to perform agency functions for the Provinces—or Local Governments where requested—as regards revenue collection, till such time as the Provinces or the Local Governments establish their own Revenue Authorities or build institutional capacity to perform the collection function themselves. The Federal Tax Authority would charge an agency commission (to be negotiated with the Provinces but usually around 15%) to cover for administrative costs with the possibility of an incentive clause that would reward the Authority for collections over a 3 year average for the Province.
- ***Localize Zakat*** We propose that *Zakat* be localised in the sense that every tier of Government collects and retains *Zakat* at their respective levels, with no pooling of *Zakat* at any higher tier. Furthermore, we propose that the levy of *Zakat* on private and non-profit organisations (Trusts, Charities, NGOs etc.) that have more than one office or branches in the country, should be made at the location of each of its offices, branches or operations and not at the Head Office level only; this would allow *Zakat* collections to benefit the areas where the operations of organisations is taking place.

INTERGOVERNMENTAL RELATIONS

17. We propose the following institutional arrangements and mechanisms for effective Intergovernmental relations under Option 3:

a. **Creation of a number of Constitutional forums** for intergovernmental relations

These would include:

- Council for Intra-Provincial Cohesion and Coordination to serve as the principal forum for intergovernmental coordination, cooperation and dispute resolution between Provincial and Local Government Levels (see Box below).

COMPOSITION AND TOR OF COUNCIL FOR INTRA-PROVINCIAL COHESION AND COORDINATION

Composition*

- | | |
|--|------------------|
| 1. Chief Minister of Province | Chairperson |
| 2. Five representatives of District Mayors | Members |
| 3. Representative of Leader of the Opposition in the Provincial Senate | Member |
| 4. Senior Provincial Cabinet Minister | Member |
| 5. Representative of the Council of Elders/Traditional Leaders | Members |
| 6. Provincial Minister for Intergovernmental Relations | Member/Secretary |

**The Council may co-opt members as per need.*

TOR

- The Council shall be responsible to Parliament and shall submit and publish an Annual Report
- The Council shall formulate and regulate policies in relation to matters enumerated in the Legislative Lists and shall exercise supervision and control over related institutions.
- The Council shall be constituted within thirty days of the Chief Minister taking oath of office.
- The Council shall have a permanent Secretariat and shall meet at least once in ninety days. The Chief Minister may convene a meeting on the request of a Province on an urgent matter.
- The decisions of the Council shall be expressed in terms of the opinion of the majority.
- Parliament will frame rules of procedure for the Council.
- Parliament, in joint sitting, may from time to time by resolution issue directions through the Provincial Government to the Council generally or in a particular matter to take action as Parliament may deem just and proper and such directions shall be binding on the Council.
- The Council will resolve disputes between and among the Federation and the constituent units.
- If the Provincial Government or a Local Government is dissatisfied with a decision of the Council, it may refer the matter to the Council for National Cohesion at the Federal level.

- iii. Establishment of Inter-Sectoral, Inter-Ministerial Forums In order to improve coordination, sharing of information, knowledge and experiences, the Constitution may provide for Ministerial forums organised along thematic lines.

SAMPLE COMPOSITION AND TOR FOR INTER-MINISTERIAL FORUMS

Thematic Areas

The sectors for which this forum could be established include:

- Public Finance Management;
- Natural Resource Management;
- e-Government;
- Energy;
- Climate Change;
- Urban Development;
- Population Welfare;
- Youth and Gender issues
- Trade
- Food Security
- Water Resource Management

Composition*

- | | |
|--|----------|
| • Federal Minister for relevant sector | Chairman |
| • Federal Minister for Planning | Member |
| • Provincial Ministers for Planning | Members |
| • Provincial Ministers of relevant sector | Members |
| • CEOs of relevant State Owned Enterprises or Funds | Members |
| • Federal Secretary, Ministry of Intergovernmental Relations | Members |

**The forum may co-opt members as per need.*

Key Functions

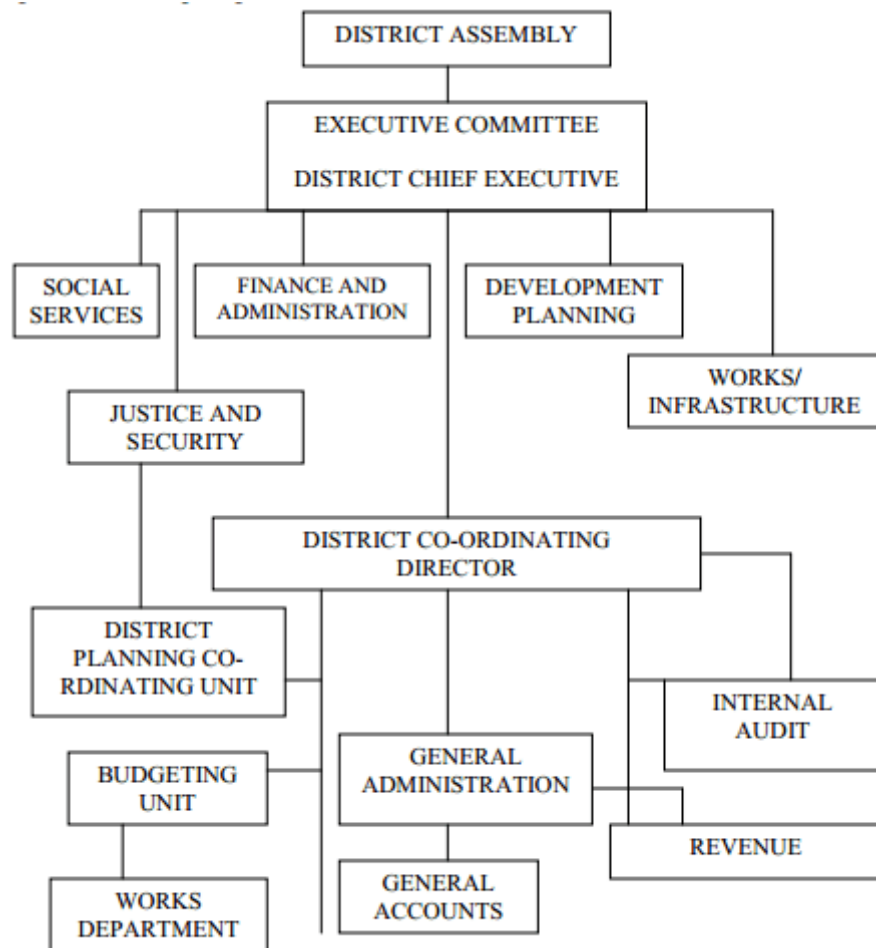
1. Setting up of voluntary National Standards (Qualitative as well as Quantitative) for sectoral inputs, processes and outcomes.
2. Ensuring sectoral and geographic consistency in key interventions.
3. Undertaking special, facilitative measures for less developed Provinces.
4. Confidence building and issue(s) resolution between the Federal Government and the Provincial Governments,
5. Facilitating the process for refining the roles and responsibilities of different tiers of Government within the framework of the Constitution and send its recommendations to the relevant authorities.
6. Providing a forum for Inter-Provincial experience sharing and learning.
7. Provide broad direction to the public debate/media interventions regarding educational issues.

- d. ***Provide for framing of Intergovernmental Relations Agreements*** These could be developed for various sectors (we mentioned the Intergovernmental Agreement for Fiscal and Financial Relations earlier), and help regulate the relations between the Federal and Provincial Governments by defining the purpose, process and plans for policy cohesion, consistency and coordination, while protecting autonomy.
- e. ***Establishing Key Constitutional Bodies and Offices*** We propose that the following institutions be Constitutional bodies or Offices (positions):
- Constitutional Supreme Court
 - General Supreme Court
 - Supreme Judicial Council
 - Election Commission of Yemen
 - Planning Commission of Yemen
 - National Economic Council of Yemen
 - National Human Rights Commission of Yemen
 - COCA and its Chairperson
 - SNACC and its Chairperson
 - Controller General of Accounts
 - Public Service Commission of Yemen
 - Higher Education Commission of Yemen
 - Governor of the Central Bank of Yemen
 - Federal Ombudsman
 - Finance Commission of Yemen
 - Finance Commission of Provinces
 - Council of National Cohesion
 - Council of Elders/Traditional Leaders
- f. ***Other Measures for Improving Intergovernmental Relations*** With a view to promote trust and assist State Building and Peace Building Efforts, we propose the following measures:
- Expedite current efforts to establish the Transitional Justice institutions, including the Commission of Inquiry and Commission for Reconciliation and Justice.
 - Put in place an Affirmative Action provision in the Constitution for citizens of the backward, underdeveloped regions; women; minorities; and the disabled in the form of quotas in Parliaments and Local Councils, employment in the civil service and the armed forces; and judiciary.
 - Establishing Intergovernmental Relations Departments at Federal and Provincial levels, to serve as the administrative arm for coordination.
 - Establishment of Sectoral Parliamentary Caucus which would allow the Standing, Special, Select and other Parliamentary Committees formed at the Federal and Provincial Levels and the Local Government Sector Committees to interact with each other on a regular basis. The organisation of the Caucus could be thematic, with, for example, a Health Parliamentary Caucus, an Economic Development Parliamentary Caucus. The Intergovernmental Relations Departments proposed above would provide the logistic and technical support needed for the Caucus.

CIVIL SERVICE STRUCTURE

OVERVIEW OF THE PROPOSED CIVIL SERVICE STRUCTURE			
	Type of Service		
	Federal	Provincial	Local
Who appoints	Federal Public Service Commission	Provincial Public Service Commission	<ul style="list-style-type: none"> Local Service Commission Local Governments to have full powers of postings and transfers for Local Service Cadres Local Service Cadres positions would comprise transferable and non-transferable positions. Transferable positions would allow for inter and intra Local Government transfers, while non-transferable would be specific to a Local Government. The latter will likely be non-gazetted, administrative and support staff positions
Which services	<ul style="list-style-type: none"> Federal Executive Service Federal Accounts Service Federal Revenue Service Federal Information Service Federal Police Service Foreign Service Land Administration Service Municipal Management Service Prosecution Service - Technical Services: Engineering Service; Health Service; ICT; Education Service; Finance Service; Economists Service; Legal Service 	<ul style="list-style-type: none"> Provincial Executive Service Provincial Police Service Information Management Service Accounting Service Revenue Service Land Administration Service Municipal Management Service Prosecution Service Technical Services: Engineering Service; Health Service; ICT; Education Service; Finance Service; Economists Service; Legal Service 	<ul style="list-style-type: none"> a. Municipal Engineers and Overseers b. Town Planners c. Rural Development Specialists d. Urban Development Specialists e. Water Supply and Sanitation Supervisors f. Sanitary Workers g. Local Finance Specialists h. Local Government Support Staff i. Local Government Ministerial Staff j. Public Health Specialists
Sharing Formula	<ul style="list-style-type: none"> Provincial Secretary Positions: 65% Federal Executive Service; 35% Provincial Executive Service Provincial Executive Positions Below the Secretary Position: 50% Federal Executive Service and 50% Provincial Executive Service Provincial Head of Police Service Positions: 65% Federal Police Service; 35% Provincial Police Service Provincial Police Positions Below the Head of Police Position: 50% Federal Police Service and 50% Provincial Police Service 	<ul style="list-style-type: none"> For gazetted positions in Local Governments, a sharing formula would be developed and followed, with 60% of managerial positions filled by Federal civil servants; 20% by Provincial civil servants and 20% by Local Service Cadre 	
Fast Track Stream	<ul style="list-style-type: none"> Commercial, Economic and Trade Counsellors in Yemen's Foreign Missions. Positions in the WTO and specific UN Committees and Organisations (e.g. UNDESA). Chief Economist of the Planning Commission of Yemen. Chief Economist of the Provincial Planning Commissions. CEO positions in State Owned Enterprises, whether at Federal or Provincial level. 		
Affirmative Action Program	<ul style="list-style-type: none"> <u>Quotas for women</u>: At least 10% of positions at all levels to be filled by female candidates. <u>Quotas for Candidates from under-represented and underdeveloped regions</u>: 5% <u>Quotas for Minorities and Disabled</u>: At least 2% of positions to be filled by candidates from minority communities and with disabilities. 		
Encadrement	Various positions encadred for the National Executive Service, the Police Service and the Foreign Service		

18. **Every District will have some common structures**, with the law providing for flexibility to accommodate specific situations, needs and plans. A sample district administration is shown below:



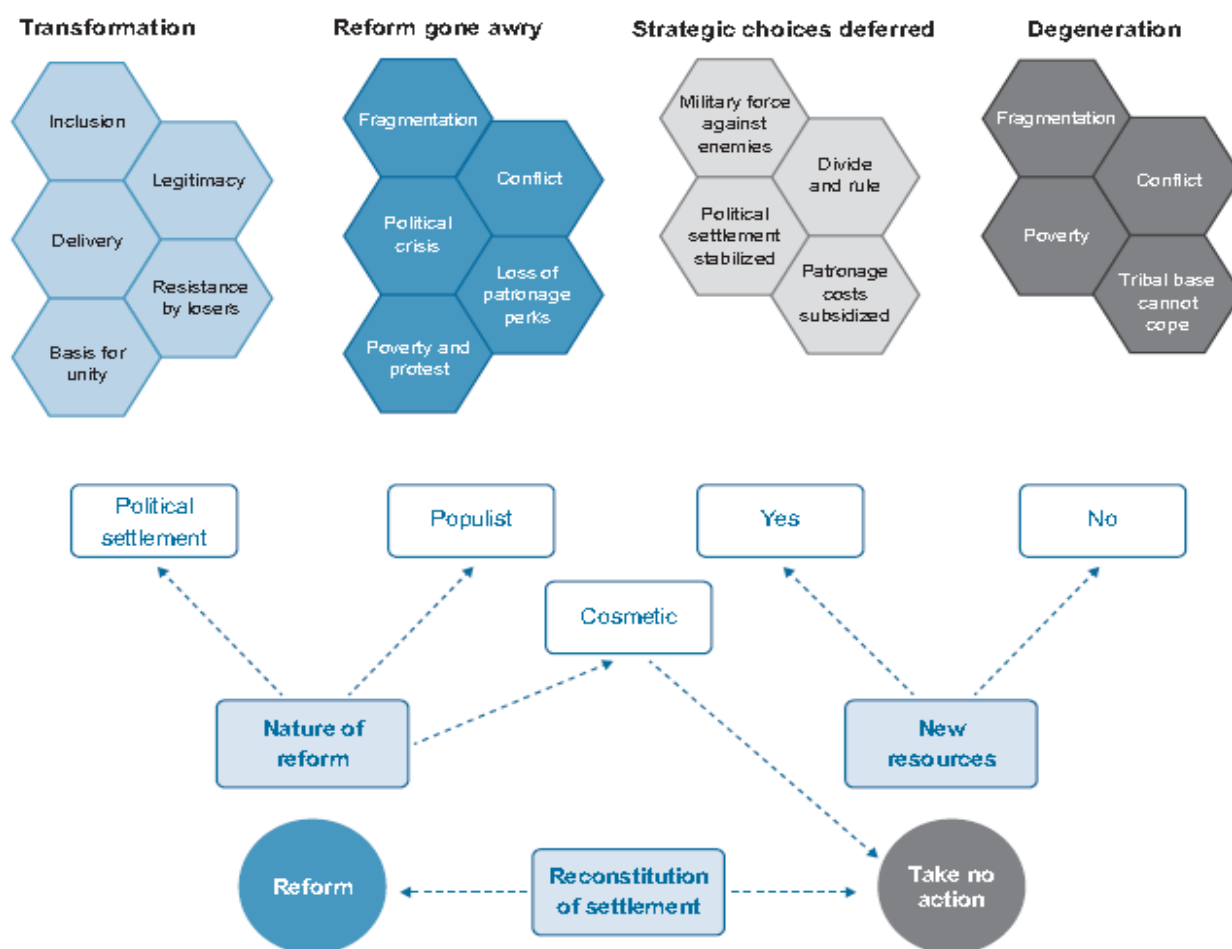
RISKS AND THEIR MITIGATION

FISCAL & PUBLIC FINANCE RISK SPECIFICATION		
Exogenous to the State	Within the State Machinery	Policy Specific Risks
Poor economic performance of the country as a result of the global slowdown—this would impact the amount of central transfers to the subnational levels in the medium-term.	Insufficient capacity throughout all institutions, e.g., not only in terms of staffing of relevant units but also skilled staff members and those who have strong hands-on experience in such areas as revenue administration, tax administration	Risk of dispersion of economic functions (e.g., fragmentation of collection of tax and nontax revenues across various departments)
Central Government policy changes with respect to the subnational levels.	Risk of corruption, fraud, and mismanagement in the public sector, e.g., resulting from weak business processes	Gaps in any relevant rules and regulations that would weaken enforcement measures
Exposure to any international market risks	Weak internal accountability mechanisms in government agencies	State Owned Enterprise-related, including weaknesses in corporate governance arrangements, difficulties in closing unviable SOEs, potential proliferation in adjustment costs of closure of SOEs.
Extraneous events	Insufficient political commitment to continuing with reforming the armed forces, political structures and civil service (or even risk of policy reversal).	Lack of adherence to the merit principle in recruitment
		Reforms and processes may not be transparent to citizens, hence the risk of low buy-in
		Inability or unwillingness of subnational governments to generate greater resources to fund various social development programs

RISK SEVERITY MATRIX						
		Impact (I)				
		5	4	3	2	1
		Very High	High	Moderate	Low	Very Low
Likelihood of event occurring (L)	5 Very likely	Type I <ul style="list-style-type: none"> Weak Local Authorities Absence of 'voice' for disadvantaged groups Implementation delays Weak political will 	<ul style="list-style-type: none"> Weak capacity of Ministry of Local Administration Inherent gender biases (and biases against disadvantaged groups) continue 	Type II <ul style="list-style-type: none"> Weak meso-level agencies as well as other associated institutions Weakness related to government business process, such as on procurement Weak Local Authority Law, and unclear mandates of local councils 		
	4 Likely	<ul style="list-style-type: none"> Non-conducive political environment Funds not used for intended purposes 	<ul style="list-style-type: none"> Local Authorities not able to use capacity development funds well 	<ul style="list-style-type: none"> Absence of Local (Government) Service Act 		
	3 Moderately likely	<ul style="list-style-type: none"> Public expectations not managed properly 	<ul style="list-style-type: none"> Fiscal transfer formula may be weak 	<ul style="list-style-type: none"> No real transfer of powers to the local level 		Type IV
	2 Unlikely	<ul style="list-style-type: none"> Unsustainable funds transfer to LAs over time 	<ul style="list-style-type: none"> Little political will in LAs to reengineer processes Few grievance handling mechanisms at local level 			
	1 Rare					
Adapted from a framework developed by Dr. Gambhir Bhatta, Principal Knowledge Management Specialist, Asian Development Bank						

RISK-BASED SCENARIOS FOR YEMEN IN THE TRANSITION PHASE

Figure 1: Critical choices facing Yemen



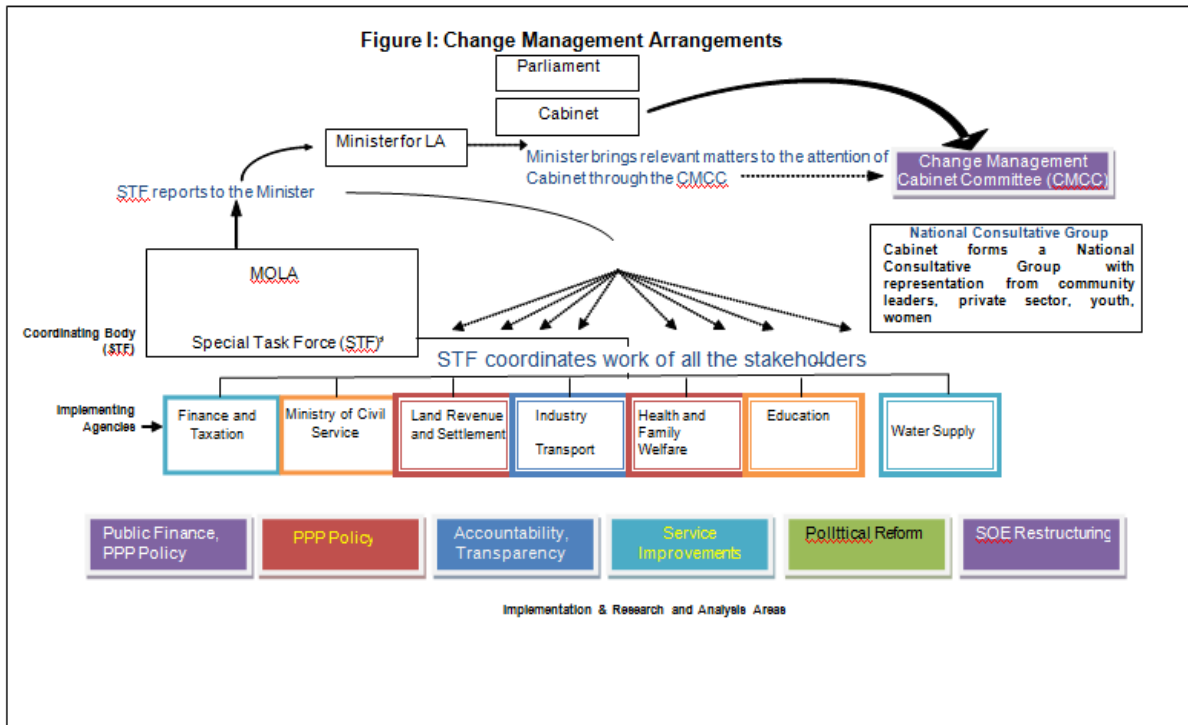
RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
Weak Local Authorities (LAs)	<ul style="list-style-type: none"> Increase in funds transfer in recent years Capacity building interventions for Local Authorities 	<ul style="list-style-type: none"> Assurances of resource increase from Government Funding sought from development partners Ring-fence funds for specific reforms Strengthen training institutions involved in local governance and training Dedicated capacity development grants for Local Authorities 	<ul style="list-style-type: none"> Management of expectations, and problems with continuance of reforms if Government cannot sustain the resource increase Ring-fencing of resources could lead to adverse reforms
Weak capacity of MOLA to manage/implement the reforms	<ul style="list-style-type: none"> General awareness in MOLA itself about this gap Leadership committed to addressing the issue Development partners have 	<ul style="list-style-type: none"> Increase in dedicated and targeted Technical Assistance to MOLA Better linkages between the MOLA and Local Authorities s needed (particularly for purposes of putting 	<ul style="list-style-type: none"> Current interest in strengthening MOLA might wane over time (as a result of, say, a change in the leadership, or as a result of lack of immediate success in the

RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
	agreed to support the MOLA in program management	the program on an even keel)	program thus leading to wariness at MOLA
Absence of 'voice' for disadvantaged groups	<ul style="list-style-type: none"> Strong media, and general public awareness, has begun to shift the situation a bit Specific CSOs and other groups quite active in some areas of the country 	<ul style="list-style-type: none"> Holistic and targeted social mobilization Support the groups financially Monitor and stay engaged with them Monitor the work of LAs Make 'voice' opportunities simple to access 	<ul style="list-style-type: none"> There is a risk that LAs will not be able to adequately deal with the 'voice' process, thus leading to frustration on the part of disadvantaged groups about what they might expect from the new government structure
Inherent gender bias (and bias against disadvantaged groups) continues	<ul style="list-style-type: none"> Greater awareness of need for gender empowerment in government processes and activities Constitutional and policy backing for a new policy 	<ul style="list-style-type: none"> Strengthen GE/SI arrangements in: (i) program framework, (ii) MLD and Local Authorities, (iii) in local development processes Monitor program with specific reference to inclusiveness 	<ul style="list-style-type: none"> Lack of resources down the road, and a waning of interest from policymakers at the centre and officials at the local level, is possible, thus jeopardizing the program
Implementation delays	<ul style="list-style-type: none"> General awareness that a problem exists Application of new rules, such as on procurement 	<ul style="list-style-type: none"> Strong focus on capacity building in the relevant institutions Streamlining work processes both at the centre and at the local level 	<ul style="list-style-type: none"> Undue influences from outside sources (such as political parties) might cause delays to continue
Citizens lack access to information on government functioning and decision making systems	<ul style="list-style-type: none"> Media active in reporting mismanagement in LAs NGOs involved in information gathering and dissemination as well Use of citizens' charter, etc., to remind service users about having 'voice' 	<ul style="list-style-type: none"> More effective grievance redress mechanisms in line agencies Aggressively monitor the performance of LAs with respect to transparency Include accountability and transparency measures and indicators in the program framework 	<ul style="list-style-type: none"> Continued biases (against both gender and disadvantaged groups) could inhibit involvement in local governance, thus further aggravating the problem of lack of engagement that is the primary cause of the current predicament
Weak meso-level and associated bodies	<ul style="list-style-type: none"> DPs providing some support to these bodies Government aware that these bodies need to be strengthened 	<ul style="list-style-type: none"> Include the roles of these bodies in program management Provide capacity building support to these bodies as well in the program 	<ul style="list-style-type: none"> Resources set aside for these bodies may not be adequate to make meaningful impact on their capability Broader political motives of these bodies will jeopardize the success of the program
Public expectations not managed properly	<ul style="list-style-type: none"> An extensive process of consultation and participation in design has already taken place 	<ul style="list-style-type: none"> Ensure that there is continued dialogue between civil society and LAs on what the program can deliver Engage with local level political leaders on setting- and managing- expectations Set very realistic, and achievable, goals 	<ul style="list-style-type: none"> The Government may want to continue to set expectations high (for political purposes), thus undermining the effectiveness of the program
Weaknesses on government business processes, such as on procurement	<ul style="list-style-type: none"> Training on procurement regulations and guidelines 	<ul style="list-style-type: none"> Continue to monitor aggressively the financial and procedural arrangements of the Procurement Act 	<ul style="list-style-type: none"> Transaction costs could undermine the appeal of the new Act and its regulations Opposition from the construction industry could also undermine the utility of the current provisions
Weak Local Authority Law	<ul style="list-style-type: none"> Review on-going of contradictory Acts with Local Authority Law 	<ul style="list-style-type: none"> Need to table the amendments at the earliest so that the Act can be strengthened with respect to greater clarity of powers and authorities of Local Authorities 	<ul style="list-style-type: none"> Even the amendments currently proposed may not accurately reflect the changed situation on the ground (this would further entrench rigidities in the system)
Absence of Local (Government) Service Act	<ul style="list-style-type: none"> Policy paper has outlined the changes required in the Act 	<ul style="list-style-type: none"> Ensure that consultations continue aggressively and that a draft is presented to the Parliament at the earliest 	<ul style="list-style-type: none"> Opposition from the central level bureaucracy might derail the Act or water down its provisions
No real transfer of powers to the local level	---	<ul style="list-style-type: none"> Amend, and strengthen, Local Authority Law Engage political leaders at the 	<ul style="list-style-type: none"> Residual opposition to transferring power to the local level among civil servants at the

RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
		centre	centre
Local Authorities not able to use capacity development funds	<ul style="list-style-type: none"> Assistance being provided to develop their absorptive capacity 	<ul style="list-style-type: none"> Target specific areas in Local Authorities that require urgent attention 	<ul style="list-style-type: none"> Funds meant for capacity development might be used for other (non-productive) purposes
Little political will to reengineer processes	<ul style="list-style-type: none"> Considerable political pressure for Local Authorities to do things differently 	<ul style="list-style-type: none"> Engage political leaders at the local level Provide adequate resources to Local Authorities to ensure that any such reengineering will not be cost prohibitive Provide opportunities for Local Authority officials to be aware of possibilities of reengineering by seeing successful instances 	<ul style="list-style-type: none"> Possibility of some Local Authorities that will not be able to successfully reengineer processes
Non-conducive political environment	<ul style="list-style-type: none"> All political parties interested in strengthening Local Authorities Move towards a federal state is not likely to be watered down, or reversed 	<ul style="list-style-type: none"> Engage senior-most ranks of the civil service on the national program Liaise with political parties at the local level 	<ul style="list-style-type: none"> Uncertainty as to the specific nature of a federal government could undermine the program
Few grievance redress mechanisms in Local Authorities	<ul style="list-style-type: none"> Accountability mechanisms such as public/social audits, citizen charters, etc. have been piloted in selected areas Local media and community organizations have stayed active 	<ul style="list-style-type: none"> Line ministries with field-based operations to develop plans to improve service delivery and accountability mechanisms Local Authorities to formalize accountability mechanisms, bolstered by monitoring of these measures on a regular basis by external parties 	<ul style="list-style-type: none"> Adequate resources not allocated for effective use of grievance redress mechanisms Local Authority officials could push back in the face of strong (and what may be perceived as rigorous) accountability measures, thus stalling transparency and accountability
Unsustainable funds transfer to LAs	<ul style="list-style-type: none"> Government has requested DPs to fund resource gap Budgetary provisions made by central government 	<ul style="list-style-type: none"> Encourage Local Authorities to focus more on own-source revenues Continue to stay engaged with development partners to ensure fund flow for the long haul 	<ul style="list-style-type: none"> Redirecting the subsidy program at the centre to make more resources available would have political consequences
Fiscal transfer formula may be weak	<ul style="list-style-type: none"> This policy paper provides recommendations on how to make formula more scientific 	<ul style="list-style-type: none"> Continue to stay engaged with Local Authorities on how the formula evolves 	<ul style="list-style-type: none"> Implementation arrangements for formula may be complex, adding costs to its application
Expenditures of funds not for purposes intended	<ul style="list-style-type: none"> Minimized MOLA role in funds transfer, thus of leakages New financial transparency rules in place 	<ul style="list-style-type: none"> Ring-fencing arrangements for LPCs and social and environmental safeguards Involve civil society and outsiders in the M&E 	<ul style="list-style-type: none"> Assurances may still not be adhered to by Government Transactions costs could increase in expanded M&E activities

CHANGE MANAGEMENT

19. In order to achieve a smooth implementation for putting in place whichever option the National Dialogue chooses as the new form of Government and decentralisation in Yemen, we propose that the Parliament assume stewardship of the process, with the Cabinet holding regular briefings and MOLA providing the institutional support for implementing the change program (Figure 1):



20. In addition, we propose the following schedule of implementation:

SCHEDULE OF IMPLEMENTATION OF CHANGE MANAGEMENT PLAN					
ACTIVITY	RESPONSIBILITY	2013	2014	2015	
Preparatory Activities					
Establish the Change Management Cabinet Committee	Cabinet				
Establish the Special Task Force	Cabinet				
Establish Thematic Working Groups	Cabinet				
Develop a Workplan with deadlines, budgets and responsibilities clearly defined	CMCC				
Policy Research and Analysis					
Comparative studies, thematic reports, policy briefs, guidelines, practice notes, strategy papers prepared	STF and Thematic Work Groups				
Conferences, meetings, workshops arranged	STF and Thematic Work Groups				
Communication and Advocacy					
Regular meetings and briefings of the CMCC, STF and the Cabinet	CMCC, STF, Cabinet and Thematic Work Groups				
Develop a communication and advocacy strategy	CMCC, Ministry of Media				
Launch a public awareness and outreach campaign	CMCC, Ministry of Media				
Establishment and operationalisation of Knowledge Management Forum and Policy Dialogue Forum	CMCC and STF				
Reporting and Accountability					
Quarterly reports by the STF and CMCC to Parliament	CMCC, STF				
Review of laws, standards, systems, practices and procedures of regulatory and oversight institutions reviewed, amended or in consultation with all relevant stakeholders	Ministry of Law				
Facilitate initiatives for open government	Ministry of Media, President's Office, Ministry of Finance				
Finalisation of Outputs					
Changes in law effected and new civil service structure put in place	Ministry of Civil Service; Ministry of Law				
CMCC and STF present their final reports and recommendations to Cabinet and Parliament	CMCC and STF				

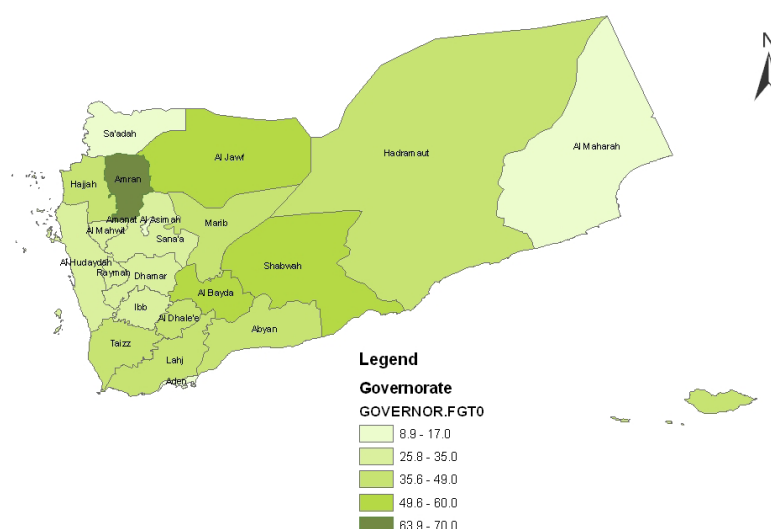
CHAPTER 1: Objectives, Methodology and Framework

I. BACKGROUND

1. Yemen is at an important cross-road in its history. With a Government of National Reconciliation in place as a consequence of the signing of the peace agreement facilitated by the Gulf Cooperation Council (GCC), the country is in the process of laying the foundations for a robust, viable State that serves a vibrant, expectant Society. Efforts towards this end are enveloped in myriad challenges that run the entire spectrum of political, economic and social issues. With poverty high¹¹ and financial resources to combat it, low¹², a State institutional infrastructure that is as fragile as the relations between different segments of society are tenuous, Yemen is in search of lasting solutions to both perennial and emerging challenges. The call for change is driven as much by demography—majority of the population is estimated to be less than 25 years of age¹³, 70% of whom are unemployed¹⁴;

Figure 1

Percentage of Poor by Governorate 2005/06



annual urban population growth rate projected to be 4.6%¹⁵--as it is by demands for equal and more equitable economic opportunity and improved delivery of and access to basic services. Considerable variation in inter-regional poverty

(Figure 1), lingering questions over allocative efficiency of financial resources, a vulnerability to both exogenous economic shocks, and endogenous risks associated with long periods of

¹¹ 34.8% as per the Yemen Poverty Assessment 2007, jointly carried out by GoY, WB and UNDP

¹² Estimates for financial resources needed to meet the MDGs by 2010-2015 run to the value of \$45b. The resources mobilised and spent between 2006-2009 was \$3.6b, inclusive of foreign assistance.

¹³ World Statistics Pocketbook, UN Statistics Division 2010

¹⁴ Integrated Social Cohesion Project, UNDP 2011

¹⁵ World Statistics Pocketbook, UN Statistics Division 2010

political insecurity, reliance on the extractive industry for revenues that also fuels regional tensions, and a dire humanitarian and food security crisis that has made half the Yemeni population food-insecure¹⁶ caused by prolonged conflict, internal displacement as indicated by the Office for the Coordination of Humanitarian Affairs (Figure 2) and consistently high influx of refugees, up from around 78,000 in 2009 to just under 100,000 in 2012¹⁷, all contribute to the weightiness of the challenge.

2. The extent to which the Yemeni publics' expectations can be met and their aspirations for change realised, depends on the manner in which the State's institutional structures, mandates, processes, powers and its relations with other stakeholders in Society are shaped. Indeed, the Peace Agreement lays out a roadmap for transition, leading to the establishment of a stable, democratic government that is accountable, protects and promotes citizens' rights and delivers services, provides rule of law and creates opportunities for economic growth that is linked to and results in social cohesion. An imperative aspect of this roadmap relates to the structure of government and decentralisation in Yemen, a decision on which is to be taken at the National Dialogue level. To facilitate the process and assist the members of the National Dialogue in arriving at that decision, the Ministry of Local Administration requested UNDP's support for development of this policy paper.

3. A team of one international consultant and two national consultants were engaged to develop this policy paper.

II. PURPOSE AND OBJECTIVES

4. The purpose of developing the policy paper is to present policy options for consideration by the members of the National Dialogue; it is intended to stimulate debate and to assist in arriving at an option that is best suited for Yemen.

Figure 2

Internally Displaced Persons by Governorate (to 31 December)		
Governorate	Registered IDPs	Registered Returnees
Sana'a	38,640	
Amran	39,780	4,778
Hajjah*	110,653	25,081
Al Jawf	24,700	
Sa'ada	103,014	6,986
Sub Total - north	316,787	36,845
Aden	20,778	78,506
Abyan	28,680	4,639
Lahj	12,912	13,222
Shabwah	1,196	239
Hadramout	3,773	1,231
Al-Bayda	883	172
Al-Maharah	311	57
Sub Total - south	68,533	98,066**
Total Registered Population	385,320	134,911

*Includes 16,384 IDPs originally from Hajjah, not Sa'ada

** Registration of returnees ongoing

Source: OCHA, 2013

¹⁶ WFP, "Food security survey to reveal alarming levels of severe hunger in Yemen" (14 March 2012)

¹⁷ UNHCR, 2012

5. The objectives of the policy paper are to:

- Improve the understanding of national and local stakeholders about the main forms of political regimes and decentralization systems, their advantages and disadvantages and the practical experiences of their application in various country contexts;
- Provide analysis of the main forms of government in the Yemeni context, including division of legislative, executive and judiciary responsibilities between various layers of government, issues of political representation at the national level and fiscal decentralization; the advantages and disadvantages of these options in terms of political, economic and social implications, including maintaining the status quo;
- Identify the actions required for implementation of each option together with an approximate timeline in keeping with the framework for the transition period and estimate approximate budget requirements for each policy option.

III. METHODOLOGY

6. The complexity of issues and the breadth and depth of analysis that the policy paper aims to capture and reflect in the policy options it presents, requires the use of a range of instruments, sources of information and data. The methodology for the policy paper has therefore comprised:

- a. **Secondary research** including a review of relevant laws, rules, regulations, decrees relating to devolution of administrative and financial powers; budgets, resource allocation, revenue and expenditures trends; review of existing literature in the form of reports, studies, analyses on the status of decentralisation in Yemen; reviews and evaluations of governance and decentralisation programs and projects in Yemen; role of civil society, issues related with accountability, conflict, resource distribution, implementation problems and the broader questions of political devolution both in Yemen and in countries faced with similar challenges; regional and international best practices which could be of relevance for the policy paper. An indicative list of reference material is found in Appendix 1.
- b. **Primary research and analysis** using:

- i. the results of a rapid assessment survey based on two questionnaire instruments, administered in a representative sample of Governorates, Districts and select offices at these local levels (Appendix 2);
- ii. Field visits to three Governorates, including focus group discussions;
- iii. Key informant and stakeholder interviews in a number of critical Central Line Ministries (CLM), central agencies, sample Governorates and District offices, political party representatives, private sector representatives, civil society organisations including tribal leadership and youth organisations. In all, we met over 150 people (Appendix 3);
- iv. Problem tree analysis for local governance, public finance management and human resource management;
- v. Stakeholder analysis using a mixture of interest-influence and power-interest grids, in conjunction with a rudimentary mapping of State-Society relations (please refer Appendix 4 for key questions for the mapping exercise); and
- vi. Stress testing of the policy options using a simplified variant of scenario analysis to identify key risks associated with each option.

IV. ASSUMPTIONS AND LIMITATIONS

7. We make the following assumptions and note the following limitations for our work:
 - a. This paper is developed based on the assumption that majority of Yemenis wish to see a united Yemen. Our proposals and options are embedded within this notion of national unity.
 - b. We also work on the assumption that the National Dialogue will be a fully inclusive forum and one which will institute appropriate mechanisms—and allocate sufficient time—for discussion, deliberation and decisions. We rely on the National Dialogue members coming to the table with an open mind, willing to embrace diversity of views and innovations.
 - c. We note for the record that paucity of time did not allow for detailed assessments of fiscal capacity at the district level, although we were able to determine the fiscal situation at the Governorate level.
 - d. We were hampered in our work by the lack of access to certain critical data—such as data on civil servant deployment across the country.

- e. The Armed Forces and other Security Forces constitute a critical cog in the wheel, but we were unable to delve into their restructuring, due to shortage of time.

V. THE APPROACH AND FRAMEWORK

8. At the outset, it is worth stating that the team working on the policy paper does not hold any particular political position nor does it promote a particular governmental model. The intent is to assist and facilitate the National Dialogue, in the first instance to trigger a debate, and subsequently, to arrive at an informed decision.

9. Methodological pluralism is a desirable approach allowing as it would, for a better understanding of the divergence of political, social, economic, legal and institutional factors, placing them within a broader political economy framework that will likely impact whatever decision is taken at the National Dialogue. Based on this approach, it is important to highlight that the policy paper does not focus not on decentralisation alone, nor on local government, but instead on the broader concept of local governance. This is a crucial distinction and of particular relevance in the context of where Yemen is at this point in terms of its socio-political, institutional and socio-political stage of development, and where it wishes to be. Issues of which form of local governance is best suited to Yemen cannot be answered appropriately if shackled within the more restrictive confines of decentralisation alone; decentralisation—within the simple definition of the process of locating decision making powers and vesting of authority at lower tiers of operations—is a subset of the construct of local governance, with local governments being the institutional vehicles for the latter. Focusing only on the technical aspects of administrative and fiscal decentralisation without reference to the importance of political *devolution* and indeed, recognising the power, influence and interests of Society—used in a broader sense to cover business community, the youth, women groups, academia, etc. and under the premise that political process is not the sole domain of political parties—would lead to policy options that are not grounded in the context of Yemen.

10. Given the complexity and diversity of issues and views that the team needs to absorb, internalise and address, the importance of having a design framework is self-evident. The principles for this framework are rooted in the principles for good governance which the GCC Peace Agreement espouses and include:

- k. Inclusion

- l. Equity
- m. Accountability and Voice
- n. Responsiveness
- o. Sustainability

11. We also propose to add 'relevance' and '*adequacy*' not as principles, but as important considerations in the design process (please refer Appendix 5 for details of this framework).

VI. STRUCTURE OF THE PAPER

12. The paper is divided into 7 chapters. Chapter 1 provides the background information, approach and limitations; Chapter 2 provides a critique of the 'as is' political, governance and capacity issues along with reflecting on key issues and on the viewpoints of stakeholders; Chapter 3 provides the justification for the Unitary State and details Option1; Chapter 4 provides the justification for a Federal system, and contains details of Options 2; Chapter 5 contains details of Option 3; Chapter 6 presents a brief risk analysis; and lastly, Chapter 7 provides a brief outline of the Change Management Plan.

CHAPTER 2:
ISSUES, VIEWS AND VOICES FROM THE FIELD

I. REFLECTIONS ON STAKEHOLDER DISCUSSIONS

1. Our discussions with stakeholders have given invaluable feedback and insights into the political economy context within which our proposed policy options will be embedded. Our reflections on the stakeholder viewpoints and our assessment of their implications are summarised below:

a. Political vision appears to be somewhat hazy....

2. Almost all the political parties we met—and we have met all major political party representatives—appeared to be reasonably strong on a broad vision for future form of government, but weak on details. They were quick to denounce centralisation and to vouch their support for a federal structure. However, their ideas for the future structure of government and in particular about the form of decentralisation, tended to be obfuscated, steeped in clichéd rhetoric and reflecting inadequate intra-party discussion (an indicative summary of this is at Table 1), as explained below. Moreover, their preference for Federalism did not clearly indicate any further preference for a particular Federal structure. Not only is there a variation in the party position as articulated by leaders in North and South (e.g. Congress Party in South supports Federal system while in North it supports a Unitary State; similarly, Socialist Party in the South wants a two-state model while in the North calls for a multi-regional federal system), but there is also a difference in the views on the form of decentralisation both within the same party (e.g. Congress Party in North stressed on local policing powers while in the South it dwelt more on Local Council powers over planning and budgeting) and between parties (Al-Moatamer wants full powers to Local Governments but does not want these to be given uniformly across the country, while the points raised by Islah and Congress point to full empowerment—in terms of complete administrative, fiscal and financial autonomy for local authorities--across the country.

3. These differences and variations are less representative of any deep political schism across the political landscape as they are of lack of a shared understanding and vision amongst and between the major parties. Indeed, there are several points of convergence (Figure 1)—such as a general desire to empower local levels and for directly elected Governors—across the political divide, as there are points of confusion about what

federalism means (e.g. the 2-State model propounded by Herak and Socialist Party was a tip of the hat to a Confederation rather than a Federation).

Region	Views on Structure of Government	Views on Decentralisation
South (Aden)	<ul style="list-style-type: none"> - Federal System with two regions - Centre retains Defence, Security, Foreign Affairs, Natural resource management 	<ul style="list-style-type: none"> - Premature to talk of nature of decentralisation, though the need is clear - Need full powers for LGs - LG model which does not lead to separation - Governorates should get full powers for planning and budgeting
South (Aden)	<ul style="list-style-type: none"> - Support federal form of government - Centre retains Foreign Affairs, Defence - Centre focuses on policy 	<ul style="list-style-type: none"> - LGs with full power - LCs approve annual development plans
South (Aden)	<ul style="list-style-type: none"> - Federal system with two states - Southern State to have 7 regions 	<ul style="list-style-type: none"> - Support decentralisation under the Socialist ideology - Retain % of oil revenues in region - Directly elected Governors
South (Aden)	<ul style="list-style-type: none"> - Federation of two independent states (North and South), with a Federal structure within each and the right of self-determination to be exercised in 5 years' time - Centre retains Finance, Defence and a Federal Court - Separate armies 	<ul style="list-style-type: none"> - Local laws in each State - Directly elected LCs, indirectly elected Governors - All candidates from region itself - Each Governorate has equal seats for representation in the Southern State Parliament
North (Amran)	<ul style="list-style-type: none"> - Support federalism with several regions - Centre should focus on policies for all sectors - Natural resources should be centrally controlled and redistributed 	<ul style="list-style-type: none"> - Support real decentralisation - LC should have full power of planning, budgeting, implementation - Give regions higher share of returns from economic activity - Directly elected Governors but candidate should be from outside the region
North (Amran)	<ul style="list-style-type: none"> - Unitary State with Parliamentary system - Parliament elects President - Central government controls natural resources and seaports, redistributes revenues to all regions 	<ul style="list-style-type: none"> - Directly elected Governors, General Secretaries and LCs - Local police under Governor
North (Amran)	<ul style="list-style-type: none"> - Federal system with more than two regions - Parliamentary form of Government - Natural resource control needs to be clearly identified in Constitution - Centre controls policy making - Centre retains Defence, Security, Foreign Affairs, Finance, Education and Health 	<ul style="list-style-type: none"> - LGs should have full powers to manage themselves
South (Hadramout)	<ul style="list-style-type: none"> - Federalism but with the right of self-determination - Two separate States—North and Hadramout - The State of Hadramout can be formed by adding Al-Maharah and parts Shabwah as they share several common features and cultural identity - The two separate States control their natural resources 	<ul style="list-style-type: none"> - LC should be extended to the lower levels of districts - Governorate should have full financial and administrative powers but these should not be uniform across the country as in some places you cannot delegate such powers - Governors and the heads should be elected from the Governorate's people
South (Hadramout)	<ul style="list-style-type: none"> - Federal system with multiple regions - The regions could be Hadramout, Al-Mahara, Wahidi 	<ul style="list-style-type: none"> - LC should have role in allocation of revenues from natural resources - When distributing the resources, the nearest regions should benefit from

		these resources first
South (Hadamout)	<ul style="list-style-type: none"> - Multiple regions under a unified Yemen - Political representation should not be based on population only but include factors such as economy 	<ul style="list-style-type: none"> - Security should be responsibility of LCs - Hadramout should have 75-80% of revenues from natural resources



I.and Federalism and decentralisation are viewed as mutually exclusive

4. Several political parties and other stakeholders' view federalism and decentralisation as 'either/or' option. This is reflected in their general tendency (captured in Table 1) to be scant on details when it came to decentralisation and to focus on the overall political structure.

m. Central bureaucracy sits on the fence....

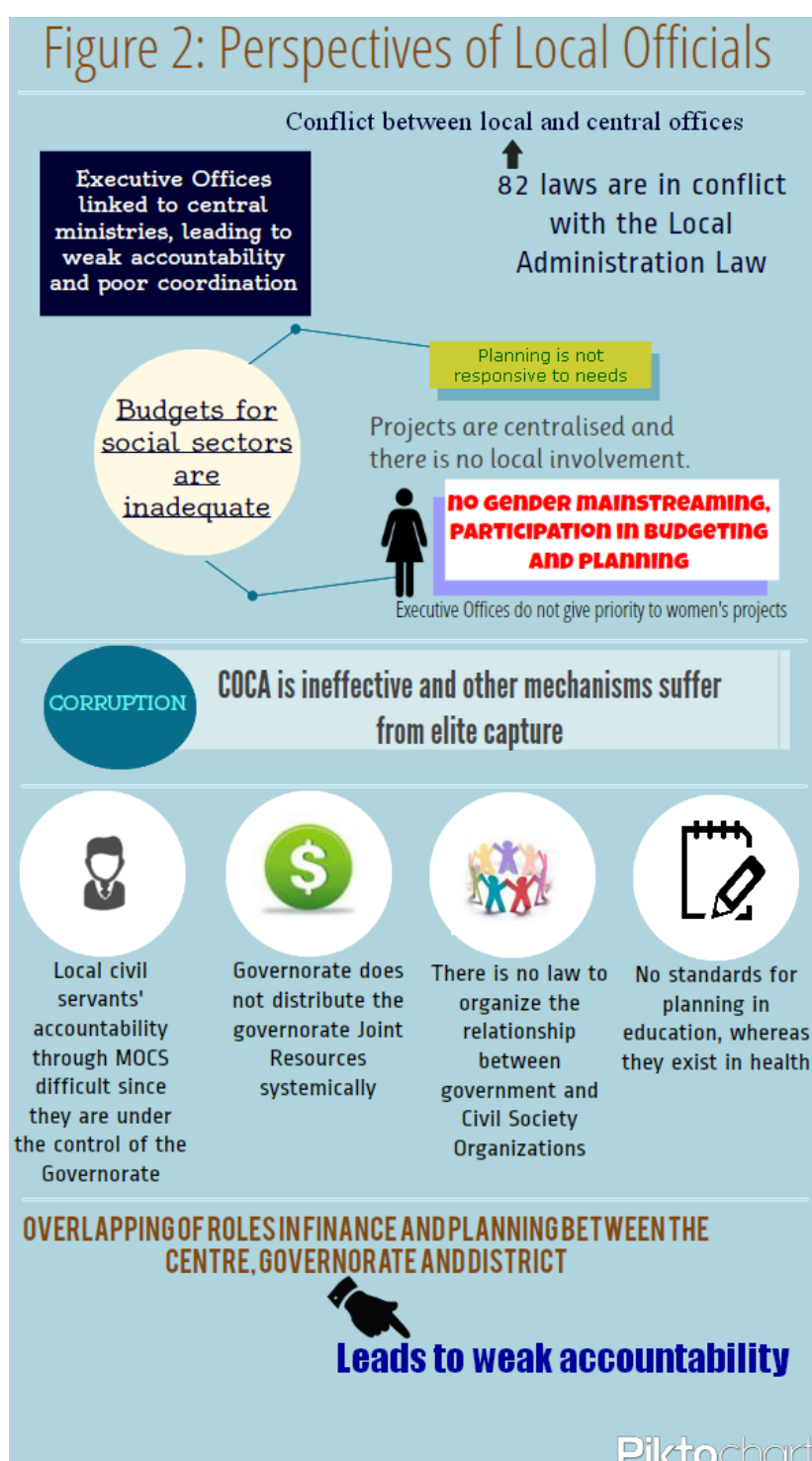
5. True to form, the bureaucracy is sceptical of any positive change and appeared to show little signs of having done any preparatory work or given much thought to the future form of government and its allied implications for the roles and responsibilities of the bureaucracy. The general feedback was that it was premature to talk of federalism and any form of true decentralisation that empowers local authorities and which did not allow the central government to interfere in administrative issues or planning and budgeting decisions.

n.but the local level bureaucracy demands empowerment

6. In stark contrast to the central bureaucracy, the bureaucrats at the Governorate and District levels were vocal and unanimous in their call for local level empowerment. What was of particular interest was their characterisation of the Governorate as equally guilty of centralising powers and of deliberate overstepping over functional boundaries, leading to operational confusion and weakening of accountability (Figure 2).

o. Roles and responsibilities lack clarity....

7. As mentioned in the earlier point, there is considerable overlapping of



roles and absence of clarity in functions, not only between centre and local levels, but within local levels and between bureaucracy and elected representatives. The conflicting provisions of a large number of laws (Appendix 6 contains an indicative list) and the tendency of higher levels of government to encroach upon mandates of lower levels—and thus violating both the legal provisions as well as the principal of subsidiarity—results in a non-enabling operational environment at local levels, particularly the Districts. Moreover, the confusing allocation of powers and functions in the Local Administration Act, between the Local Council and the bureaucracy, with the former practically subservient to the latter and not the other way around as decentralised governance would dictate, has led to the Local Councils we met voicing their helplessness to bring about improvements.

p. ... and lead to weak accountability

8. The blurring of mandates and the lack of transparency in operations is apparent at all levels. During our field visit to Aden, we made an impromptu stop at a small public hospital in the city, whose manager—a medical doctor employed by the District Health Office—was also a member of the Local Council of the same District! The weak powers of the Local Councils to enforce accountability at Governorate or District level are matched by insignificant central level legislative oversight. Despite monitoring and public accountability being cited as a common weakness across the public sector, there are few robust institutions available to enforce it. The discussions do point, however, to an agreement on strengthening public accountability through enhanced community involvement and facilitating collective action.

q. There is general agreement on enhancing women's political empowerment....

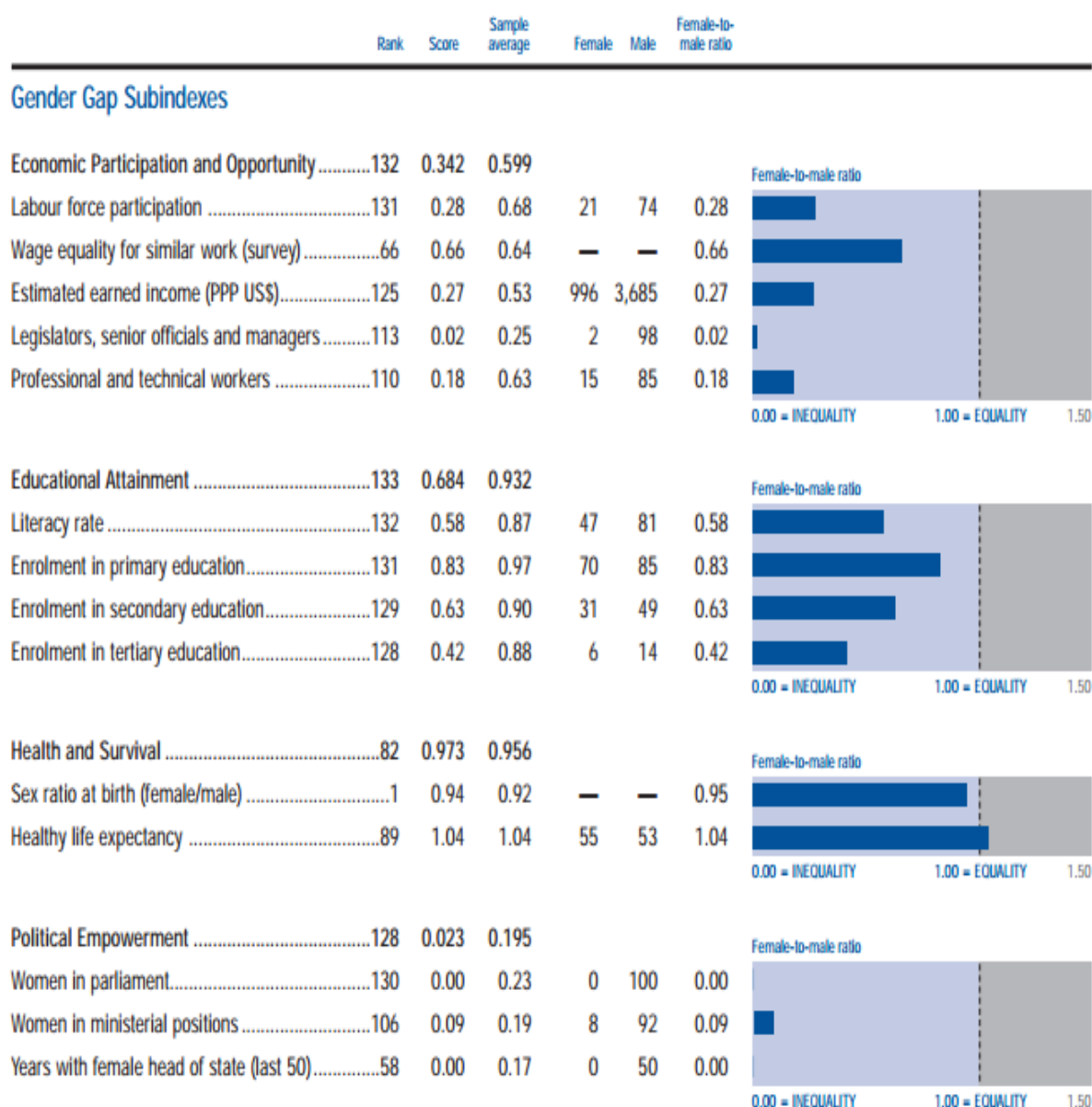
9. All political parties, civil society organisations and bureaucrats were supportive of the idea of a 30% quota for women in parliamentary seats, but the issue of representation needs to also extend to internal party structures. There were some reservations expressed in Amran about the extent to which this would be practical in the North and on a similar quota for women in the civil service positions.

r.but gender inequities are aplenty

10. Statistics on gender imbalance in Yemen are not very flattering. For the second year running, Yemen is at the bottom of the Global Gender Gap Index (Figure 3) and there is little evidence otherwise too of women's issues being given a priority. At the local level, this manifests itself in the form of inadequate priority and funding for women's projects and during field visits, the representative of the National Committee for Women voiced her concern over the lack of attention given in both the planning and the social sector offices, to

prioritising investments in women-related projects. Lack of access to gender-disaggregated data makes it difficult to ascertain the extent to which this lack of targeting is contributing to deepening of women's vulnerabilities and to compare regional variations, but it is known that there are no women-specific allocations in the budget and most allocations are geared towards infrastructure, rather than human and women's development. The broad indicators would suggest that these vulnerabilities present a great challenge for reducing gender-inequality and for development of Yemen as a whole.

Figure 3: Yemen Gender Gap Index



Source: Global Gender Gap Report 2012, World Economic Forum. The ranking is out of 135 countries.

s. Civil society focuses on accountability and rights....

t.but they lack adequate space

12. Although there are a few forums such as Mother-Father Councils and Water User Committees at the local level, platforms for community participation are few and far in between. The CSOs called for creation of more space, particularly in relation to planning and monitoring at local levels. The youth organisations and members of the Change Squares drew attention to lack of forums for youth participation (and UNDP could do well to pause and reflect on its Youth Observatory initiative and explore ways in which it could expand its outreach), while the women-led or women's related organisation called for participation in planning and monitoring. When probed, all the CSOs acknowledged the influence and power of informal institutions, including the fact that their rent-seeking behaviour aside, tribal leaders played a useful role in relation to dispute resolution; they were wary however, as were the local level bureaucrats, of creating formal linkages between the informal and informal institutions; whether this was because of the novelty of the idea itself or whether they feared being crowded out of the sphere of local influence they themselves wield or strive to cultivate, was not readily apparent. Nevertheless, there is clearly a need to establish institutional arrangements for collective action and interfacing of formal and informal institutions at all levels of governmental operations.

u. Call for special status to some regions based mainly on economic potential....

13. The call for giving special status to Aden is well documented. During our field visits, these calls were repeated, not just for Aden, but for Hadramout as well. While the reasons for this demand ranged from the economic (sea port, oil producing region, etc.), to the political (autonomy is a public choice reflected in years of struggle), and the historical (legacy of independent rule), when probed, political parties, technocrats and elected officials alike were not forthcoming on exactly how this special status would translate into better basic services for the people and what economic plans they had developed. Without meaning to discount the soundness of these calls for granting of special status, these arguments need to be weighed seriously in the light of several considerations: Aden's economic potential has been somewhat undermined by the Djibouti port and the Salalah port in Oman; oil production is on the decline; and the investments required to build, improve and/or maintain sea ports would be beyond the capabilities of the twin cities. Nevertheless, it is clear that the excessive centralisation of powers in Sana'a has led to restricted economic and political opportunities and there is great merit in the case for increased decentralisation, irrespective of whether special status is assigned to any region(s) or not.

v. ...but privatisation is viewed somewhat negatively

14. Owing mainly to the Socialist rule, discussions with various stakeholders in the South revealed a proclivity for viewing privatisation negatively. Even the youth representatives we met called for job creation in the public sector, which was surprising, for one would have thought they would be keener on entrepreneurship and private sector led economic opportunities. This – for lack of a better term — aversion to privatisation and private sector driven growth sits uncomfortably with the notion of assignment of special status based on economic potential, because it would be difficult for a socialist-driven framework leading to growth in the current global environment; China's approach, experience and success in this socialist-capitalism model is unique to China itself and hard to imagine that being replicated successfully in Yemen for a host of reasons.

15. In the North and specifically in Amran where we visited, the negative view was embedded in a different context: all stakeholders were unanimous in their admonishment of the local cement factory for the environmental damage it was causing, as well as for its general lack of corporate social responsibility. This environmental perspective was interesting and pointed to the increased awareness amongst communities about causal relationships between public health and private investment. It also pointed to the need for stronger regulatory institutions at the local, not the central level.

16. The views of the private sector were by-and-large region-neutral and reflected a common desire to be unshackled from the control of the centre, reduction in corruption and increase in transparency and ensconced in the hope of a gradual dismantling of the web of politico-economic patronage fostered through informal networks. There were specific areas of concern pointed out by the Chamber of Commerce & Industry in Amran, who called for a streamlining of the inspections regime so as to reduce the burden of reporting—and payments of rents--on businesses, special attention for Small & Medium Enterprises (SMEs) and on public private partnerships.

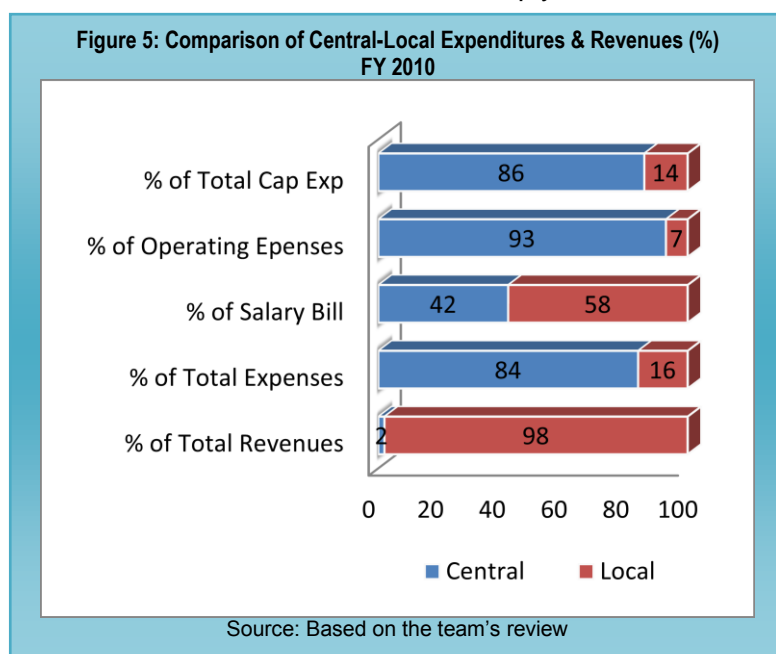
w. Resource management is key.....

17. The desire and demand for control over natural and financial resources echoed across all divides in our stakeholder interaction. While control over financial resources is easy to argue for, the issue of natural resource management is trickier: in any form of government, ownership of assets and resources brings with it responsibilities of both managerial and financial kind; the argument presented by some politicians and communities in the South, for full control and ownership over natural resources, appear less convincing than is the call for a greater share in the revenues generated from them. This is a major

consideration to factor into any options for future structure of government. The views shared by local level officials tended to be similar to those of the elected representatives, in that they pointed to the severe inadequacies of financing, but added that it wasn't just that the centre provided insufficient funds for development, but that the Governorate tended to release funds in spurts and starts and not always in a transparent manner. The political economy factors that impact resource management at local levels can distort planning and implementation processes and would need to be counter balanced in our design of fiscal decentralisation.

x. ...but resources are scarce and not aligned with responsibilities

18. For services to improve finance must follow function and this simply has not been the case in Yemen (Figure 5). Local level officials repeatedly pointed to the mismatch between functions and finances, indicating that for health and education, the amounts allocated covered barely half the amounts required, leading them to collect user fees which are not reflected in the budgets or the final accounts.



y. Inter-governmental relations are weak....

19. Inter-governmental relations (IGR) in any structure of government are central to its smooth functioning. From the information and views gathered, it is evident that IGR is weak to the point of being non-existent. There are few institutional forums for regular centre-local dialogue and coordination and those that do exist tend to be driven from the top and not meant to serve as problem solving or knowledge sharing platforms. The existence of several central agencies—e.g. Central Administration for Control and Audit (COCA), Tax Authority--in the form of branches or representation in the Deewaan at Governorate levels does little to alleviate the challenges of effective operational coordination and in fact exacerbate the confusion created by matrix management of civil servants.

z.as is donor coordination

20. The interaction we have had with development partners, including within UNDP, points to three issues: one, most development partners appear to be also sitting on the fence and waiting for events to unfold before taking a position; two, while some of them, UNDP and World Bank included, are working actively to contribute to the evolving discourse surrounding the future of Yemen, few were willing to reveal their cards—this is not surprising given that evidence on donor harmonisation and aid coordination have long been unfulfilled agendas across developing countries—although UNDPs efforts to convene the Working Group on Good Governance is a step in the right direction; and three, while all of them recognise the importance and influence of political economy and informal institutions on issues of development, accountability and economic growth, their interventions (programs and projects) tend to be sanitised in approach, weighed down by technical analysis and veer too heavily on the principle of ‘do no harm’ and on remote-management rather than hands-on ground level engagement, despite their own internal assessments—such as DFIDs Country Program Evaluation¹⁸—pointing to the need for the latter. Given that development partners, particularly the bilateral agencies, are important actors (Figure 6) in the political economy of Yemen owing to its geo-strategic considerations, the significance of effective donor coordination at this juncture in Yemen’s history, cannot be stressed enough.

FIGURE 6: OFFICIAL DEVELOPMENT ASSISTANCE (ODA) TO YEMEN (2008-2010)

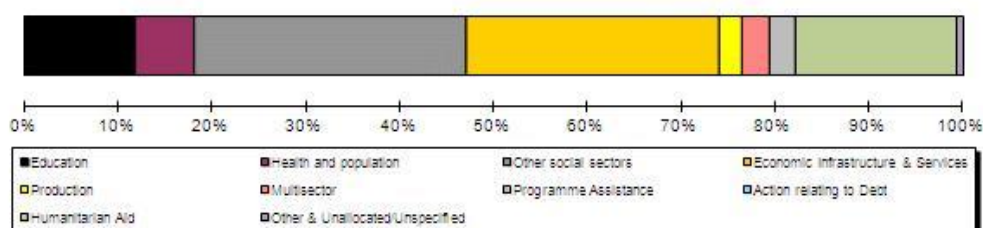
Yemen

Receipts	2008	2009	2010
Net ODA (USD million)	430	558	666
Bilateral share (gross ODA)	44%	56%	47%
Net ODA / GNI	1.7%	2.2%	..
Net Private flows (USD million)	669	436	- 989

For reference	2008	2009	2010
Population (million)	22.6	23.3	24.1
GNI per capita (Atlas USD)	970	1 070	..

Top Ten Donors of gross ODA (2009-10 average) (USD m)	
1	IDA 146
2	United Arab Emirates 99
3	Germany 83
4	AFESD 76
5	United Kingdom 50
6	United States 36
7	Japan 34
8	EU Institutions 32
9	Netherlands 29
10	IMF (Concessional Trust Funds) 27

Bilateral ODA by Sector (2009-10)

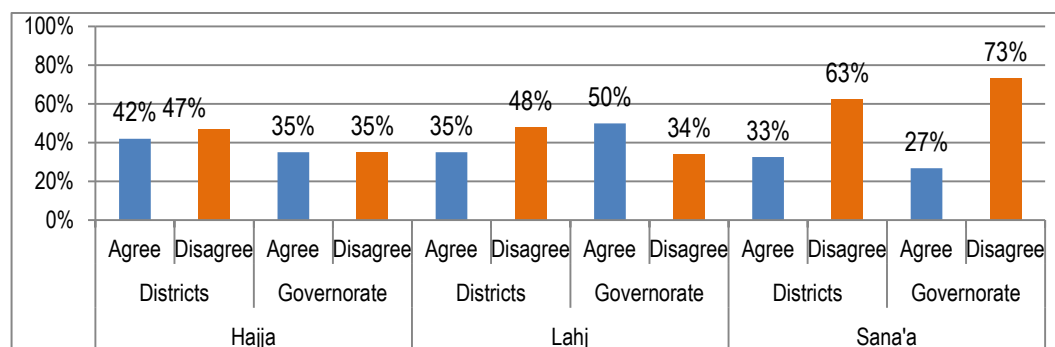


¹⁸ Cou

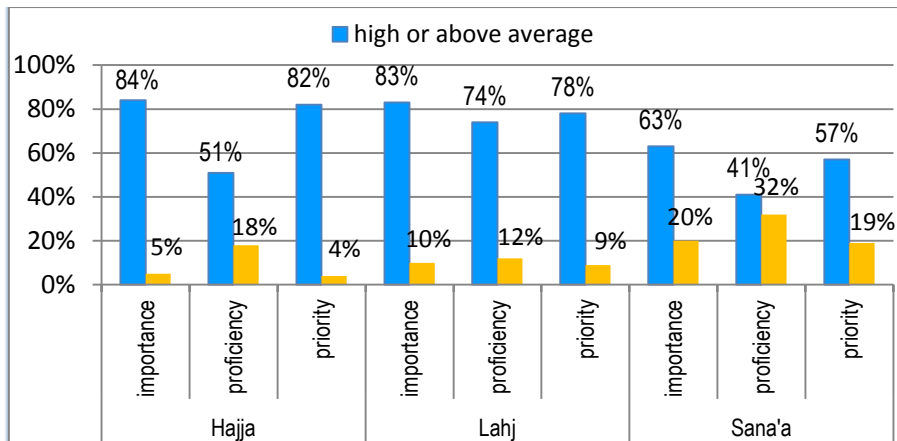
II. MAIN FINDINGS OF THE RAPID SURVEY

21. The rapid assessment survey was administered in October and the main findings are summarised below:

- **Only 12% of respondents agreed** that **“monitoring of outcomes is conducted systematically and used for learning and development initiatives”**.
- **Only 18% of respondents agreed** that **“financial resources and capital assets are adequate”**, while the majority (77%) disagreed.
- **Thirty nine (39%) agreed** with the statement that **“there is a close link between expenditure and outputs”**, while 38% disagreed. However, there is variation in responses from different regions (see below).



- **Fifty four percent (54%) of the respondents agreed** with the statement that **“strong accountability and audit mechanisms are in place”** while 36% disagreed.
- The proportion of respondents who agreed that **“Decision-making is decentralized”** is 37% while 60% disagreed.
- **Thirty five percent (35%) of the respondents agreed** that **“reward and incentive system is fair and equitable”** while 58% disagreed.
- In terms of **developing new business processes and systems**, **59% perceive it to be important for their work** while 22% consider it less important. In terms of their current proficiency level in this topic, 31% said it is high or above average, 19% average, and 30% low or below average. As a training priority, 32% said it is a high priority or above average while 21% said it was a low priority or below average.
- **Public financial management was perceived important for the work of 54%** while 24% consider it less important. In terms of their current proficiency level in this topic, 28% said it is high or above average, 16% average, and 38% low or below average. As a training priority, 52% said it is a high priority or above average while 26% said it was a low priority or below average.
- **Working with the citizens and civil society organizations was perceived important for the work of 71%** while 10% considered it less important. In terms of current proficiency levels of bureaucrats in this topic, 46% said it is high or above average, 18% average, and 17% low or below average. As a training priority, 56% said it is a high priority or above average while 12% said it was a low priority or below average. Here too, some regional variation was evident (see below).



III. KEY ISSUES

22. The key issues are summarised below:

a. Diversity in the 'South' Viewpoint

23. Recognising the centrality of the North-South divide for any options we develop, we are also keenly aware of the diversity of political and economic views in the South. We have noted earlier in this report that Aden and Hadramout both want special status and even with these two regions, there is difference of opinion on the content, extent and structure of autonomy. This raises the challenge for the team, in that we have to weigh competing political, cultural, economic interests and influences while trying to posit a balanced approach to resolving the North-South issues through an institutional structure that ***solves the problems and creates opportunities for citizens.***

b. Finding Equilibrium for the Pendulum

24. The need to strike a balance between we would like to call the ‘pendulum views’—in relation to administrative structures, balance of powers between centre and decentralised levels and between elected representatives, civil servants and civil society—and the context within which any governmental structure is to work successfully, is self-evident. The failure of decentralisation to curb State fragility and secessionist movements in some countries—and in some cases its likelihood of deepening and facilitating it (Figure 7)—is a risk that we are mindful of. It is important to ensure that the options we

FIGURE 7: DOES DECENTRALISATION PREVENT SECESSION?

Decentralized states - <i>weak</i> secessionist movement	Decentralized states - <i>strong</i> secessionist movement
<ul style="list-style-type: none"> • Belgium • India • Spain • South Africa • Switzerland • Russia 	<ul style="list-style-type: none"> • Malaysia • Indonesia • Pakistan • Ethiopia • Indonesia • Nigeria • Czechoslovakia • Yugoslavia • USSR

Source: Rothschild, 2004

propose reduce this risk by ensuring that the content matches the contexts—political, economic, institutional maturity and sophistication, informal and formal—and not give in to the temptation of letting the pendulum swing the other way without calibrating it for an equilibrium. We are aiming to do this by maintaining a ‘***citizen-centric***’ approach, constantly asking ourselves as to how and whether the structure, processes and mechanisms we propose will likely translate into better services, security and opportunity for the public.

c. Battling the Resource Curse

25. Given that the political discourse is so deeply entrenched in the economics and politics of extractive industry-based patronage, we are exploring various options to provide for institutional mechanism that reduce the resource curse. Yemen is not the first and most certainly won’t be the last country to suffer from this tragedy of commons and there are examples of how other countries have successfully shaken off the curse, which we can learn from. In addition, we recognise that innovations may be needed to prevent this *tragedy of commons* from morphing into a long term *tragedy of the common people*. Political, economic and social empowerment of people is the ultimate aim of any government structure and in addressing this resource curse, we will look at ways for direct empowerment, securing what we’d like to term as a ‘***citizen’s dividend***’ from natural resources, rather than investing our faith solely in the ‘benevolent State using ensuring equitable distribution’ model, i.e assuming that the State would use revenues from the natural resources diligently and efficiently, leading to better services for citizens and creation of economic opportunity.

d. Finding Near-Bespoke Options

26. The political, economic, cultural and capacity diversity existing in Yemen demands that the structures of government and decentralisation models proposed are bespoke or near-bespoke, while based on a substantial common ground of rules, institutions, standards and understanding. This is easier said than done, especially in the face of veiled and some not-so-veiled aspirations to secessionism. The political economy analysis we are undertaking and the rudimentary review of formal-informal institutional interplay will inform our proposals for whether a consociational¹⁹ or corporatist²⁰ structure of governance would be better suited for Yemen. This is achievable through clear definition of political, legal, administrative, financial and fiscal powers across the governmental value chain; by providing flexibility in decision making; and by avoiding to the extent possible, an institutional mash-up as a means of political or administrative expediency. In addition, the use of multiple criteria for allocation of financial resources—which address regional imbalances in terms of natural resource endowment, fiscal and managerial capacity, cost of service delivery, regional disparities in population density and socio-economic conditions and which reward fiscal effort, efficiency and innovation—can be effective means of arriving at a near-bespoke model.

e. Finding Fiscal Space Where There Might be None

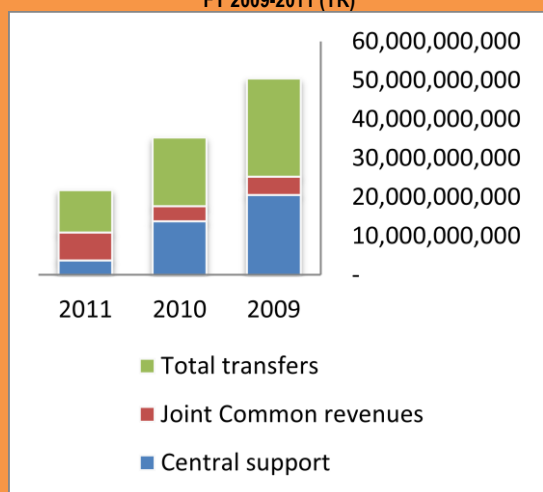
27. Fiscal autonomy underpins successful decentralisation. However, autonomy in an environment of fiscal drought may hold little value. Moreover, with own-source revenues forming an insignificant proportion of their total revenues—the average proportion between FY2008-2010 has been 4%²¹--Governorates and Districts are almost completely reliant on the central transfers which have been declining sharply (Figure 8) and with considerable variations in budgeted and actual transfers (Figure 9); the intermediary level of Governorates is part of the problem, for the criteria on which intra-Governorate allocations are made are unclear. Given that fiscal transfers from the centre are in turn dependent on the oil economy, which is in decline, the prospects for widening of the resource-gaps are very real.

¹⁹ A state with deep internal divisions along ethnic, religious, or linguistic lines, with none of the divisions large enough to form a majority group, yet nonetheless manages to remain stable, due to consultation among the elites of each of its major social groups. For more on consociationalism, please see O'Leary, Brendan (2005). "Debating consociational politics: Normative and explanatory arguments". In Noel, Sid JR. *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*. Montreal: McGill-Queen's Press

²⁰ A political system in which some large interest groups become more powerful than others in the political and economic arena. For more details, see for example, Wiarda, Howard J. (1997) *Corporatism and comparative politics*. Armonk, NY: M.E. Sharpe.

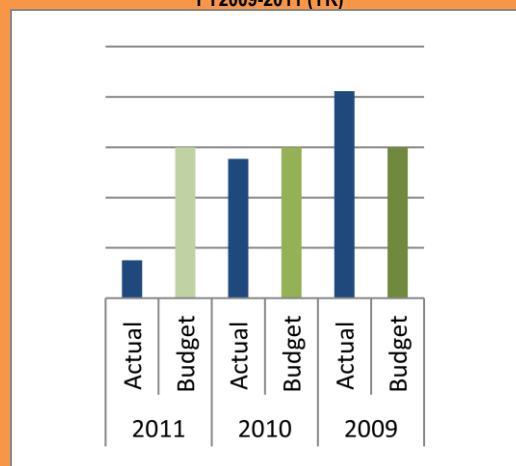
²¹ Based on the Team's review of fiscal management

Figure 8: Central Transfers to Local Authorities
FY 2009-2011 (YR)



Source: Based on the team's review

Figure 9: Variation between Budgeted and Actual Central
Support to Local Authorities
FY2009-2011 (YR)



Source: Based on the team's review

28. However, in addition to these issues of severely restrictive fiscal space for the local authorities, there is the issue of where the local authority budgets flow, in terms of sectors (Table 2). While it is true that given the control exercised by the centre, these allocations may not reflect local choices and preferences, but they do provide a glimpse of what goes on inside the local budget.

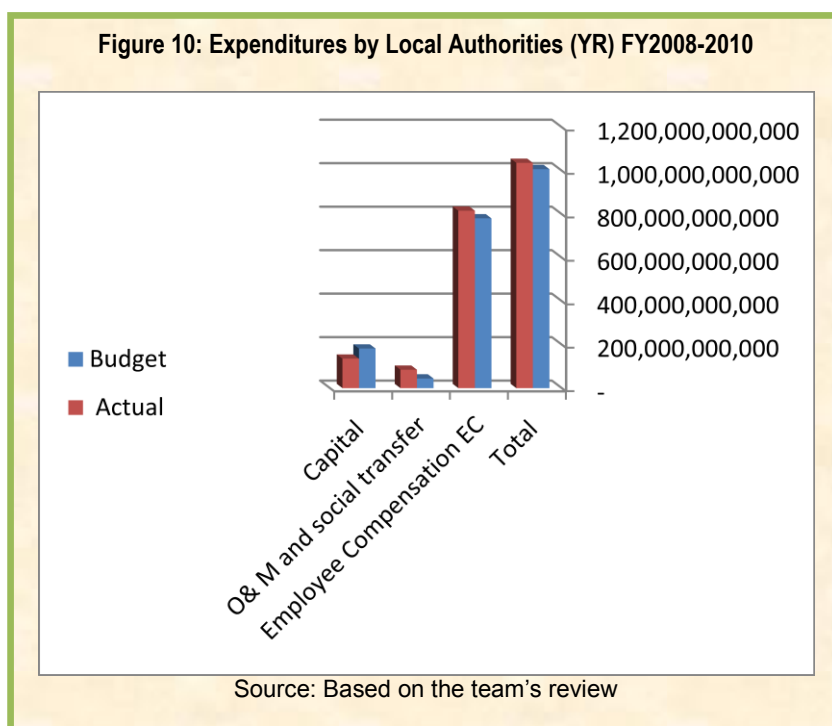
29. On the face of it, the social sectors receive the highest allocations—nearly 82% of the total allocations—but a closer examination of these expenditures reveals that an overwhelming proportion of these allocations are committed expenditures, with salaries consuming the lion's share and practically nothing for Operations & Maintenance and capital investments (Figure 10). It is also pertinent to note the differences in budgeted and actual amounts, reflecting poor budget accuracy and underscoring the very weak public finance management

TABLE 2: SECTORAL ALLOCATION BY LOCAL AUTHORITIES
FY2011

Office	% of Total Budget
Education	69
Vocational Training	1
Health	11
Public Works	7
Water and Environment (office)	0.1
Dewans	0.98
Expatriate Office	0.04
Legal Affairs	0.07
Planning	0.17
Civil Service	0.41
Finance	1.55
MoLA office	4.45
Labor and Social	0.47
Youth	0.33
Culture	0.3
Tourism	0.12
information	0.12
Agriculture and Irrigation	1.69
Fishery	0.28
Petroleum	0.07
Electricity (office)	0.001
Telecommunication Office	0.01
Transportation	0.07
Trade	0.36
Endowment (Guidance Department)	0.26

Source: Based on team's review

capacity, as indicated in the PEFA carried out in 2008 by the World Bank²².



i. Tackling the Contentious Issues of Administrative Division

30. In our assessment, the number of Governorates and districts are far too many, based on considerations other than economic or administrative and lead to spreading the resources too thinly (Table 3). Our paper will include proposals associated with each option and based on multiple criteria including but not limited to: geography, economic potential, fiscal potential, cultural and social affiliation and affinity.

31. There have been several attempts in the past to change the administrative division but none of these have yielded results (Box 1).

No.	Governorate	Capital	No. of Districts	Population
1	Sana'a- Capital	Sana'a city	10	1,747,834
2	Aden	Aden city	8	589,419
3	Taiz	Taiz	23	2,393,425
4	Sana'a Governorate	Al Rowdah	16	919,215
5	Ibb	Ibb	20	2,131,861
6	Hodeidah	Hodeidah	26	2,157,552
7	Hadramout	Mukalla	30	1,028,556
8	Hajah	Hajah	31	1,479,568
9	Dhamar	Dhamar	12	1,330,108
10	Lahj	Al Houtah	15	722,694
11	Al Baidah	Al Baidah	20	577,369
12	Abain	Zunjobar	11	433,819
13	shabwa	Ataq	17	470,440
14	Sa'ada	Sa'ada	15	695,033
15	Al Mahweet	Al Mahweet	9	494,557
16	Marib	Marib	14	238,522
17	Al Jouf	Al Hazm	12	443,797
18	Al Mahrah	Al Jaidah	9	88,594
19	Amran	Amran	20	877,786
20	Al Dale'a	Al Dale'a	9	470,564
21	Raimah	Al Jabeen	6	394,448
	Total	21	333	19,685,161

²² Public Expenditure Financial Accountability Assessment for Yemen, World Bank, 2008

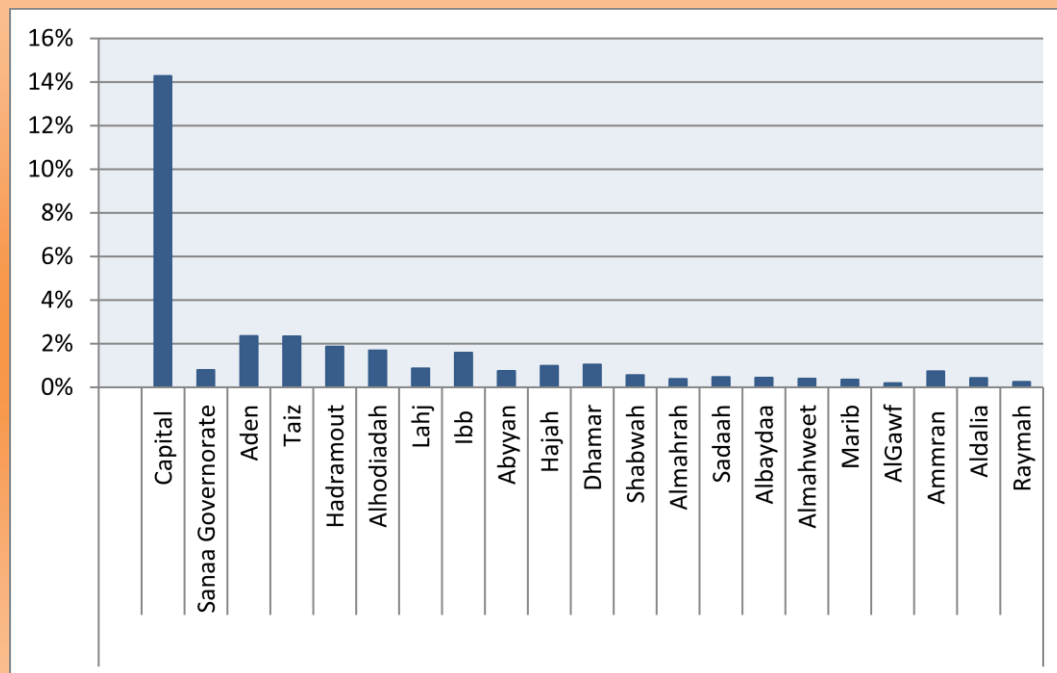
BOX 1: EFFORTS TO REVIEW ADMINISTRATIVE DIVISION IN YEMEN

Since 1990, three main attempts have been made to review the country's administrative division:

- **The first attempt of the administrative division was a committee headed by Sheikh / Abdullah Bin Hussein Al-Ahmar**, formed immediately after the establishment of the Republic of Yemen. However, the committee could not do anything noteworthy perhaps because of the transitional period and political tensions.
- **The second committee was formed in 1994 and headed by Justice AbdulKarim Al Arashi**. The committee recommended an administrative division that included 22 governorates but the relevant project office at the time did not accept these recommendations and also did not share the report for discussion, even within public institutions.
- **The third attempt was in 2001. A committee was formed, headed by Mr. Sadiq Amin Aburas - Minister of Local Administration**. This committee included representatives from the concerned authorities in the country and constituted the first serious attempts to submit a draft for administrative division. The committee determined criteria, carried out surveys and attempted to align political constituencies with the administrative set up. However the committee could not complete its work as the House of Representatives shut down its operations.

32. We have taken note of the viewpoints on this score expressed by political parties, community leaders and CSOs and have carried out some work on assessing the contribution made by local authorities to overall tax collection (Figure 11) as well as evaluated the trends in overall revenue collection as a way of identifying economic potential of regions. Since the administrative division has implications for political representation, we are reviewing our proposals from that perspective as well. Moreover, given the urbanisation trend and the need to treat urban areas differently in terms of their functions, resources and management, we are reviewing scenarios for making a legal distinction between urban and rural areas.

Figure 11: Contribution of Local Authorities to Tax Collection FY2009-2010



Source: Based on the team's review

j. Creating fit for purpose institutions

33. The current functional assignment is flawed and a source of many difficulties being faced by local authorities, characterised by functional overlaps, lack of clarity or just plain inappropriateness; for example, Governorate performs municipal functions, rather than municipalities, while Districts perform health functions that run the entire gamut of health service delivery, from prevention to curative to behaviour change. Likewise the Urban Planning Office in Governorates prepare the Urban Master Plan, which is approved by the centre; this may have been acceptable had it not been for the fact that (a) the Local Administration Law does not distinguish between rural and urban areas; (b) there is no specialised spatial planning agency at the centre; and (c) the central Land Authority arbitrarily, defines the criteria for declaring urban areas, one of which is the existence of government buildings in the area! Clearly, there is a need to ensure that following the principle of subsidiarity, appropriate levels and institutions are identified for functional assignments. The overlaps in functions are also evident for example, in case of the Social Fund for Development (which has assumed the role of several social sector line ministries) and the National Committee for Women (whose role vis-a-vis the Women's Department in MOLA is unclear). Indeed, one of our challenges is to review the purpose, mandates and functioning of a large number of central agencies that impose and encroach upon not only the central ministries but also the local authorities.

i. Addressing Civil Service Issues

34. An efficient, accountable civil service is at the core of an effective service delivery mechanism. At present, the substantial disparity in education facilities and the inadequate arrangements for in-service training is giving rise to disparities in the quality and capacity of civil servants. We identified institutional mechanisms for addressing this issue and discussed options at length with central and local level civil servants. Since the wage bill constitutes the single biggest expenditure and because the quality, efficiency and accountability of civil servants can be a major determinant of improvements in public service delivery, we are carefully putting in place our proposal for a structure that can work in and for Yemen and trying to avoid the pitfall of decentralised governance leading to a ballooning of central bureaucracy, as has been the case in several countries. Without meaning to propose any drastic downsizing, we aim to present a structure that is flatter, leaner and which is embedded in the broader context of redefining 'public good' and reconceptualising 'public services' and weighing options for placing delivery responsibility for some services in alternative domains, including private and CSO sectors.

j. Managing the Water Sector

35. The current institutional structure of the department of water and sanitation sector at the local level is not in line with the institutional structure of the district. The transfer of public corporations of water and sanitary in the urban areas to local corporations has contributed, though partly, to the administrative process which is under the Governor's powers and supervision. In small towns and rural districts, however, such problems have not been solved. There is a gap between the Public Corporation for Rural Water – which is in charge of water management - and the institutional structure of the district, as the institutional link between them is not clear, though the corporation tries to involve and engage the community through committees or by handing over the projects to committees from the target community. This gap necessitates redefining roles of the Public Corporation for Rural Water and the district, as well as the role of the district in the urban areas at present, where the governorate has the role to manage water resources. Moreover, water management is currently linked to sanitation and public health services and this obvious linkage needs to be translated into planning, budgeting and implementation responsibilities at the local level.

k. The Challenge of Establishing Direct Governance Systems

36. In keeping with our objective of developing a citizen-centric governance structure, we are looking at ways in which a *direct governance* approach can be incorporated. This means creating a FAST governance structure (Table 4). This requires a focus on public

accountability and on bridging the gulf between informal and formal institutions. This is extremely challenging. The institutions charged with the responsibility of enforcing public accountability--the Supreme National Authority for Combating Corruption (SNACC) and the Central Organisation for Control and Auditing (COCA)—are widely criticised for their ineffectiveness and their jurisdiction and powers are circumscribed either by law (e.g. COCA cannot prosecute Vice Ministers and above) or by practice (e.g. SNACC has limited staff to undertake investigations).

TABLE 4: CREATING A FAST GOVERNANCE STRUCTURE

Elements	Characteristics	Manifestations
Flatter	Reducing the distance between the government and the people Decreasing layers in hierarchies between top management and line personnel	Establishing institutional platforms for community participation at every level Administrative simplification
Agile	Adaptive institutions Focus on citizen needs	Periodic performance reviews with inbuilt incentives Output-based budgets; People's Budgeting; conditional grants targeting vulnerable, marginalised segments like women, children, disabled; citizen empowerment through cash transfers
Streamlined	Networking, partnerships, innovations in service delivery Retraining, redeployment, gradual reduction in civil service size at centre Redefine public goods and public services Public Value is guiding principle	Enabling environment for PPPs; promoting PPPs through incentive grants Managerial: administrative staff ratios; deployment strategy; encadrement of key positions Periodic public sector reviews; privatisation; cooperatives Budgets linked to efficiency in service delivery; public sector competes with private sector; voucher schemes in education, health
Tech-enabled	Align policy, legal and regulatory frameworks, standards and processes to ICT innovations m-government	Social media accountability, process re-engineering Public Service Hotline; information access over phone; tracking of applications, complaints

Basic idea adapted from 'Future of Government', World Economic Forum, 2012. Some Characteristics and all Manifestations author's own

37. A host of other problems abound: the existence of an elaborate political patronage system means that power is exercised not through formal institutions, but through a network of tribal and ethno-regional relationships²³; despite Yemen's participation in the Extractive Industries Transparency Initiative (EITI), corruption in the extractive industries is widely perceived as a key driver of wealth accumulation, informal power and political patronage; an Access to Information Law was passed in the first quarter of 2012 but awareness about this is low and access to information continues to be a major challenge, with most government institutions failing to embrace the principle of public disclosure (e.g. COCA's annual report

²³ Alley, A., Rules of the Game: Unpacking Patronage Politics in Yemen, The Middle East Journal, 2010

and budgets and expenditures of public institutions at all levels are inaccessible); public procurement is riddled with several structural, capacity and implementation deficiencies as well as absence of standards and transparency²⁴; and avenues for citizen grievance redress lie in the informal institutions, not the formal ones.

38. Based on stakeholder discussions and our own assessments on a range of factors (political, cultural, socio-economic, capacity), we are working to develop public-citizen interfaces and on instituting *ambient accountability* processes and systems. We also think the informal institutions, customary laws and traditional informal justice systems can be leveraged for providing low-cost justice to the public, supplementing the formal justice systems.

I. Military Reform: The Great Black Hole?

39. One major limitation of our work is the absence of information on the military reform process. While we are working on proposals to bring local policing functions under local administration, we admit to our lack of awareness on the broader security sector reforms. Given the political and even economic ramifications of the military reforms and allied military-economy complex, this is a critical limitation of this paper.

²⁴ Enhancing Integrity in Public Procurement in Yemen, OECD, 2007

CHAPTER 3:
POLICY OPTION 1: REFORMING THE UNITARY STATE

1. INTRODUCTION TO THE POLICY OPTION

1. Yemen is faced with a plethora of political, economic, administrative, ethno-religious and resources-related challenges. At the core of these problems is that the formal institutional structure of the Unitary State in Yemen has been unable—in its existing form—to address the diversity of issues and challenges that exist, and which continue to evolve in the country. The deep fissures in society along economic, ethnic, parochial, political and religious lines have been exacerbated—and perhaps abetted—as much by a formal institutional arrangement that does not address—and perhaps was never intended to—issues of equity, empowerment and enablement, as they are by entrenched vested interests, deep and broad political patronage networks and informal institutions that are more powerful, influential and embedded into public policy decision making than are the formal ones.

2. The result of this complex web of factors, interests and influences is that the legitimacy of the State has eroded severely, citizen-welfare and public policy have become subservient to elite interests, public accountability has vaporised and capabilities for delivering public services have failed to keep pace with demand or expected quality. While it would be incorrect to ascribe all these failures to the structure of government and the functioning of public sector institutions, their contribution has been by no means small and has been progressively damaging.

Caught in the State Capability Trap

3. There are two aspects to this predicament facing the State institutions: one, the *design* of the Unitary State itself, which created unequal power-sharing between the Centre, the Governorates and Districts, principally through the Local Authorities Act; and two, the *practice of deconcentration* of functions and responsibilities—as has been argued in the critique of decentralisation reforms in this policy paper, what is euphemistically referred to as *decentralisation* in Yemen is actually little more than *deconcentration*—presumes the existence of efficient, effective and accountable public sector institutions with a strong State-community nexus, both of which are rare. Combined, the twin aspects present the classical case of Yemen being caught in the *state capability trap*²⁵. Typically, this trap manifests itself in the form of designing and operating systems of formal governance that are predicated on capabilities that either do not exist (e.g. politically empowered elected representatives at all tiers, efficient civil service); which have a pronounced tendency to favour form over function

²⁵ Pritchett, L. et al, *Capability Traps? Mechanisms for Persistent Implementation Failure*, Harvard University, 2010

(e.g. existence of local councils at Governorate and District levels but which are essentially placed under bureaucratic control); and are based on unrealistic expectations (e.g. improvements in service delivery at local level in the absence of adequate and requisite political, managerial and fiscal powers and without consistent investments in State institutional capacity building at all levels). Furthermore, such States rely on institutional structures and mechanisms that are neither inclusive, nor accountable or responsive to citizens' needs (e.g. local plans are prepared by Executive Offices with minimal community engagement, local planning and centrally controlled financing are delinked). Moreover they are superseded in terms of influence by informal institutions (e.g. dispute resolution is more effective and accessible in the informal sector than it is in the formal one). To address these capability gaps, these States need to institute a strong regime of citizen access to information as a mechanism for open governance; instead, they have largely asymmetric information flows that do little to build public confidence and which fuel perceptions of widespread corruption and patronage (e.g. unpublished budget data; publically inaccessible COCA reports; and apparent lack of transparency in grant of oil concessions and use of oil revenues).

Justifying the Unitary State

4. In the light of this situation, the key question is, whether the Unitary State presents the appropriate political and institutional model for repairing Yemen's fractured governance?

5. The answer is two-fold: one, even within a Unitary State, it *is* possible to establish a vibrant democracy, enhance the coverage and quality of basic services and ensure the security and rights of citizens. Indeed, majority of Nation-States in the world are based on the Unitary State model, including some of the strongest, economically powerful nations, where local governance systems not only exist, but flourish; and two, from a pragmatic viewpoint, transforming the existing model of Unitary State in Yemen, represents a viable option and one which would not require an overhaul of the entire governmental system and thus have lower costs associated with it.

6. By reassigning tasks and functions from centre to the Governorates and Districts and by enhancing the financial and administrative powers, empowerment of local, service delivery levels is possible within the structure of a Unitary State. Moreover, such empowerment would not be dependent on any redrawing of the administrative divisions; instead, reformation of the Unitary State can be achieved within the existing administrative

units on both levels (Governorates/ Districts) with some slight changes in the powers and structures introduced for major cities, to enable a better fit between the institutional arrangements and the demands of urban management. This feature—of enabling reform of the existing structure is in some ways also in sync with the ‘do no harm’ approach²⁶ which stakeholders appear to have adopted in dealing with States in crisis or emerging from them. Clearly, the attractiveness of making improvements in the Unitary State is self-evident from a practical and administrative perspective.

II. KEY PRINCIPLES

7. This option proposes to reform the current Unitary State, with changes to certain institutional arrangements and introduction of greater transparency, clarification of roles and adoption of more citizen-centric approaches, within the existing Constitutional framework.

Principles

8. This option is based on the following principles:
- a. **Supporting the ongoing reforms initiatives within the decentralisation framework** but with more attention to implementation details, tailoring policy reforms to rationalise and reflect the state of decentralisation and greater focus on developing or refining instruments for targeting the poor, planning and monitoring.
 - b. Developing greater clarity on fiscal and administrative intergovernmental relations by **reviewing the fiscal transfer mechanism and including** formula-based **sector specific fiscal transfers**.
 - c. **Incentivising public private partnership and Alternative Service Delivery (ASD)** and broadening the concept of PPPs to actively promote financially sustainable partnerships with for-profit sector.
 - d. Addressing sector financing issues by **more detailed, careful, objective assessments for sector financing needs and basis of resource allocation**. This would allow for resource allocation that is closer to expenditure needs, priorities and plans

²⁶ *Do No Harm: International Support for State Building*, OECD, 2010

- e. **Identifying high impact areas of interventions** requiring changes in the legal, fiscal and administrative frameworks, impacting local level performance and implementing them through a set of incentives, policies and strategies in line with the provisions of the Local Administration Law.

III. KEY FEATURES

9. We propose the following measures for improving the efficiency and effectiveness of the Unitary State, with the aim of moving from *deconcentration*, to *decentralisation*. Some of these proposals take the agenda outlined in the National Local Government Strategy (2008) and builds on some ongoing reforms, including on public finance.

Clarifying the Legal Framework

10. The legal framework in itself is at fault when it comes to defining the roles and responsibilities of the local authorities and their relationship with the central government. To address this issue, we propose that:

- a. The Constitution be amended so as to remove the contradiction in its provisions, particularly Article 144, to prevent interference of the central government in local affairs, and Article 146, to clarify the role of local councils to be consistent with Article 4. The conflict currently existing in Article 144 is that this Article gives the right to every minister to supervise his ministry branch in the local administrative units. The article should limit the ministry's power to a supervising role.
- b. Re-defining the functions of the local councils in Article 146 to make the local councils powerful in supervision and monitoring. The executive organs would work under the responsibility and control of local councils, excluding the latter from any executive roles.
- c. Security officials of the administrative units must be under the supervision and monitoring of local councils. The Republican Decree No. 65 of 2002, which considers the local police as central bodies should be abolished, because it is contrary to the concept of autonomy of local government units.

Strengthening the Role of Local Councils

11. The current roles of Local Councils and Executive Offices are so intertwined as to be indistinguishable in many ways. This leads to incoherence in operations and weakens both political and administrative accountability. To address this fundamental weakness, we propose that:

- i. The Executive Officers at the Governorate and District levels are made administratively accountable to the respective Local Councils, not to the Governor of the Governorate. This would mean that the Local Councils would be empowered to enforce disciplinary action against officials and to impose penalties within limits prescribed by law.
- ii. Powers of Local Councils to approve budgets, plans and projects at their respective levels be enhanced, without recourse to the higher level (i.e. Districts approve their own plans and budgets based on the resources made available to them and Governorates approve their own plans and budgets without any reference to the central government;) this can be made possible by enhancing the caps on budget they can approve at their own levels from for example, the current YR50 million on District plans, to YR100 million and a similar enhancement achieved for Governorates from their current levels. The Ministry of Local Administration will perform a supervisory function, establishing and overseeing the implementation of norms, processes and procedures. However, this supervision would not be intrusive and subject to the limits proposed above, Local Authorities would not be required to submit any budget or plan to the central government.

Clarifying Intergovernmental Relations

12. The need for clear, rule-based intergovernmental relations both on the administrative and financial aspects cannot be emphasized enough. The Local Authority Law outlines some principles for intergovernmental relations but lacks the details that could have resolved and clarified administrative and fiscal intergovernmental relations *ab initio*. To address this challenge we propose that

- i. A Local Authorities Commission be established as an independent statutory body. Its compositions and functions are provided in Appendix 7.

- ii. Establish an independent Fiscal Distribution Committee to improve fiscal intergovernmental relations, simplifying the criteria for fiscal distribution from centre to local authorities and improving predictability of funds flow for both capital and non-salary recurrent budgets. Please see Appendix 8 for an example of how this has been done in Uganda.

Enhancing Fiscal Space for Sustainable Improvements in Service Delivery

13. The overwhelming reliance on fiscal transfers from the central government and monopolisation of buoyant taxes means the local authorities are severely hampered in any effort to improve services. In order to create more fiscal space, we propose that:

- a. More equitable sharing of Joint Resources at Governorate level. At present resources are shared equally, without any relation to the needs of Governorates. We propose that the distribution be made on the basis of a review of size, level of development and fiscal need of Governorates. This task can be performed by the proposed independent Fiscal Distribution Committee.
- b. Review the fiscal distribution formula to include inverse population density and some element of improvements in fiscal marksmanship. This would allow for greater relevance of the formula to take into account high service delivery costs in sparsely populated areas and to incentivise fiscal efficiency.

Improving Accountability and Enforcement Capabilities

14. The need for strengthening institutions and mechanisms to effectively mitigate fiduciary, political and administrative risks emerging from corruption and mal-administration is evident at all tiers of government but particularly so for local authorities. To arrest the situation, we propose that:

- i. Social accountability processes be strengthened, through establishment of civil society forums at the level of Governorates and Districts which will be concerned with the issues of improving the management and delivery of services and to combat corruption. These forums would comprise members from the local authority, civil society organizations and the private sector. The creation of such forums would contribute to activating and framing the partnership between Government agencies

and civil society organizations (CSOs) in combating corruption. It will also contribute to the progressive development of these forums to become corporate entities. They will also contribute to raising awareness of the risks of corruption and its devastating effects, and will enhance the capacities and skills of CSOs and the Government in the follow-up and monitoring of corruption.

- ii. Strengthen the role of the judiciary to handle cases against local level corruption The judiciary must strengthen its role to monitor corruption in service delivery by local authorities, by putting in place mechanisms that are speedy, easy and affordable for the general public. In addition, the Ministry of Interior needs to put in place special prosecution teams to assist speedy disposal of cases by the judiciary.
- iii. Strengthen Local Council oversight through establishment and operationalisation of Council Committees for monitoring, including:
 - The Planning and Finance Oversight Committee
 - The Social Sector Oversight Committee
 - The Water Oversight Committee
 - The Public Works Committee
 - Governorate Committee for Intra-districts Issues and Disputes and Coordination with the Central Government and other governorates
- iv. Establish a formal public grievance redress mechanism, including the office of an Ombudsman/Mohtasib for a cluster of Governorates, The Mohtasib would be responsible for redress of public grievances relating to maladministration, negligence, delays and denial of services by local authorities. The Mohtasib would be a Constitutional office, appointed by the President, be accountable to Parliament and its functions and powers would be defined under a statute.

Invest in Capacity Building

15. There is a need to undertake a concerted, organized and phased process of capacity building, so as to ensure that there is alignment between skills and mandates, roles and rules and incentives and implementation. This capacity building exercise would need to be nuanced in its approach and systematic in implementation, resisting the temptation for following a one-size-fits-all premise, recognizing the variation in the levels of awareness, absorption capacity, knowledge, access to and organization of information, stakeholder

willingness to resist change. The process also needs to be informed by past experience in capacity building and based on an iterative, long-term plan that links capacity building with personal and institutional incentives. To this end, we propose:

- a. The establishment of a capacity development conditional grant, distributed as a fiscal transfer to top up other grants. This capacity development grant would be available for use only on institutional capacity development (MIS, legal frameworks, HRM plans etc.). Please see Appendix 9 for an example of conditional grants in Bangladesh.

Enhance Local Level Responsiveness to Local Needs

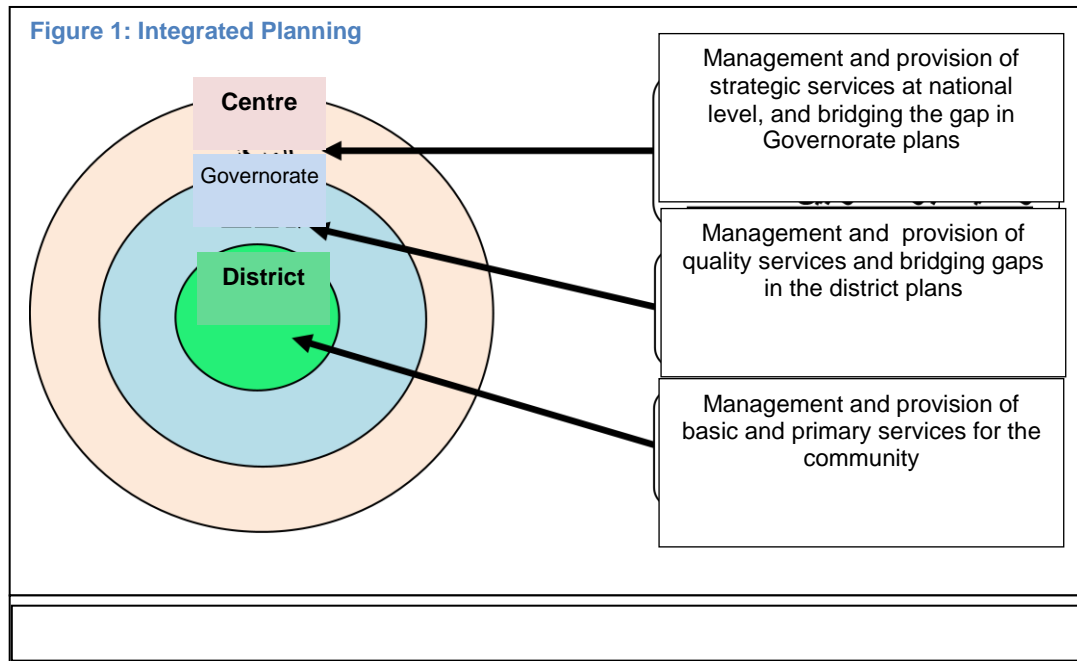
16. The imperative of making local budgeting and planning processes to become more responsive to the local requirements and needs is self-evident. The local budgeting process needs to be flexible in dealing with these needs, taking into consideration the requirements of the local economic development, as well as improving monitoring aspects. In this regard, we propose that:

- a. The power of approving local budgets should be the sole responsibility of the local council.
- b. The system of tenders and procurement should also be reformed so as to make it a local system that fits the nature of local tasks, size of resources and local budgets.

17. Furthermore, we propose that with regard to economic and developmental plans, the following actions be undertaken (also please see Figure 1).

- The role of the District is restricted to the management and provision of services in its geographic scope. In the field of investment, the plan must be within the potential and capacities available for the district. In this respect, specific types of projects and financial ceilings can be determined.
- The Governorate role focuses on the management and provision of services in its geographic scope and that it does not duplicate or interfere in the work of the Districts as regards functions and responsibilities assigned to the latter, unless there is a specific request from the Districts or where the argument of achieving economies of scale are strong. A planning manual could be developed in this regard to guide Governorate and District officials as to when and what kind of plans could be better prepared and executed at the Governorate level.

18. The central strategic plan (at the national level) embedded in the National Five-Year Plan, could identify strategic projects and detail their operational aspect, as well as the deployment of special funds (e.g. Social Development Fund).



CHAPTER 4:
POLICY OPTION 2: FEDERAL STATE WITH TWO-TIERED STRUCTURE
FEDERAL AND PROVINCIAL

I. INTRODUCTION TO THE POLICY OPTION

1. A major alternative to the Unitary State is Federalism. There are several possibilities for a governmental structure and power sharing within the overall framework of a Federal State, but we are presenting Option 2 in the form of a Federal State with a two-tiered structure: Federal and Provincial.

The Teleological Argument for Federalism

2. The reasons that make Federalism appear to be an appropriate option for Yemen range from the political to economic to institutional to the social. While we dwell on these reasons below, it is useful to share at the outset that their structural characteristics are essentially embedded in the teleological arguments²⁷ for Federalism. Simply put, there are negative and positive justifications for Federalism. The former relate to the ability of Federalism to reduce the risk of arbitrary political coercion; the latter to the probability of its creating and sustaining a legal order and conditions that promotes the common good²⁸.

3. For all the aspirations and appearances towards building democracy in Yemen, the polity had all the characteristics of an undemocratic structure²⁹ with accusations made against the former regimes for allegedly putting in place a vast political and economic patronage system that has expanded over time³⁰. This has created a strong public demand--voiced not only in the Change and Freedom Squares, but also in political and academic circles—for a more inclusive and open system of political and economic governance, where neither power nor benefits accrue to only the few. Federalism with a two tiered structure, with Provinces enjoying a menu of exclusive powers, while sharing others with the Federal level, provides a stronger likelihood for this vision to be realised. Again, while it is useful to reiterate that we can only refer to the higher *probability* of such outcomes under a Federal structure, it is true that the inverse relationship between the degree of political fragmentation and the likelihood of abuse of power means that Federalism under a two-tiered model of Federal and Provincial governments, reduces the risk of political coercion by fragmenting

²⁷ A teleological argument is one where a course of action is recommended on the basis of its being a necessary or useful means of accomplishing a desired objective.

²⁸ Pannier, R., *Justifying Federalism*, William Mitchell Law Review, 2005

²⁹ It can be argued that Yemen has, at various times of its recent history, been a stratocracy (a State structure over which the military chiefs wield great influence and power) and a kleptocracy (A form of government in which State institutions are designed to increase private wealth and political power of ruling elites through embezzlement, nepotism and economic rents, at the cost of public services).

³⁰ Alley, A.L, *The Rules of the Game: Unpacking Political Patronage Politics in Yemen*, Middle East Institute, 2010

political power between geographical units. This vertical separation of political power is one of Federalism's chief justifications.

The Need for Crafting a Shared Identity

4. Another major justification appears to be a shared desire to forge a common, national identity. Almost everyone we have interacted with—politicians, civil society, bureaucrats—have expressed the hope that whatever the structure of government, it must be one that fosters national unity. Federalism allows for this by providing space for political differences, diversity of views and disparities in socio-economic conditions. The common ascription of this being the political and institutional mechanism of choice for finding 'unity amidst diversity' is as applicable to Yemen as it is to a more developed nation. It goes without saying that striking a balance between the objectives of pursuing national unity while simultaneously facilitating diversity is never easy in practice and calls for a delicacy and sophistication of political negotiation that enables regional and national loyalties and related issues of autonomy and political power, to be comfortably placed side by side. Evidence from Federalist countries has shown that there is variation in outcomes³¹, and the desire for a shared identity is not the sole driver for a Federalist State, but clearly, the presence and expression of this desire is a desirable starting point.

Addressing the Inequities of Distribution

5. Federalism also provides the opportunity for a more level playing field in relation to sharing of the economic benefits and for achieving greater equity in wealth and resource distribution. The refrain of concentration of power under the current structure of governance leading to social exclusion, civil unrest, coercion, inequity in and elite capture of financial resources, economic opportunities and political power, echoed loud across our discussions, be it in the North or in the South of Yemen. This perception of inequity is borne out by evidence in terms of allocation of financial resources, composition of the civil service and control over revenues particularly from natural resources, through a complex system of administrative control and what appears to be a politically-inspired patronage system that is surrounded in lack of transparency and rent seeking behaviour among the military, the politicians and the tribal leaders³². Governorates in the South, such as Hadramout present a

³¹ R. Watts, "The Contemporary Relevance of the Federal Idea," *Saint Louis-Warsaw Law Journal*, 1995

³² Phillips, S., Yemen: Developmental Dysfunction and Division in a Crisis State, Development Leadership Program, 2011

case for partial or full control over management of natural resources—in this case, oil; Amran raised the issue of not benefiting from agricultural outputs such as Qat, on which they are not allowed to impose a tax. By allowing federating units to be part of the joint decision making process as regards the mechanisms, processes and oversight of the resource—both natural and financial—and opportunity distribution and by empowering them to take certain decisions in relation to local economic development in their respective jurisdictions, Federalism provides a Constitution-based system for addressing inequities. These systems face several political economy and governance related challenges and are rarely smooth in implementation, but at least these battles are played out over a relatively level playing field.

Freedom from the Fetters of Political Control

6. Federalism paves the way for political liberty. By fragmenting political power between levels of government and across regions, it achieves a vertical and horizontal sharing of the exercise of political freedom. The independence provided to Provinces under a Federal model is a desirable phenomenon in that it allows public choices to be made by a larger number of people through a political process, thus creating a close bond between citizens, their representatives and the decisions made that impact citizen's lives. Moreover, such a process allows for tailoring of choices to particular contexts, ambitions and objectives at the Provincial levels and for a shared and agreed framework for public policy at the Federal level, thus addressing the representational void which exists under a Unitary System. An externality of the process of exercise of independent political power at the Provincial level—and indeed of Provincial participation in national decision making and shaping of public policy—is that Provinces can learn from the experience of the other; the existence of several forums for sharing of knowledge and experiences under a Federal system provides ample space for such cross-regional learning, which in turn benefits the common public policy choices undertaken at the Federal level. Almost all political parties and civil society members we engaged with were unanimous in their desire for this political liberation under a Federalist model, for a variety of reasons: politicians for greater political autonomy; civil society for unencumbered collective action for citizens' rights and drive for public accountability and transparency; bureaucrats for a more linear line of political control, clarity in roles and administrative freedom; and the youth for the possibility of more equal opportunities for a secure, economically beneficial future.

How Do These Justifications Play Out? A Summary

7. There are three ways in which Federalism enables diversity, political liberty and equity to be ensconced within the narrative of national unity, regional sovereignty and : (a) It provides for a Constitutional framework that clearly recognises diversity—be it in the form of minority rights, variation in fiscal capacity across the country or the need to provide room for articulation of different public choices through political means—and then goes on to establish a clear set of rules, rights and responsibilities through which such diversity is to be protected and promoted; this forms the basis for any Federalist model to embed its structure within the local cultures, aspirations and political ideologies; (b) It establishes a relationship between the Federal Government and the federating units that is based on principles of equality and clarity, by devolving powers—political, administrative, legal and fiscal—which the Federal Government cannot divest the federating units of through unilateral actions—the balance of power which Federalism provides is one of its most strongest features; and (c) It provides for Constitutional mechanisms for cooperation, policy coherence and dispute resolution as regards the balance of power, the rules, roles and responsibilities to be resolved not simply through political negotiations, but through independent institutions such as the Supreme Court or other Constitutional bodies such as a second chamber of Parliament or a council on which all federating units and the Federal Government are represented.

II. KEY PRINCIPLES

8. This option proposes a two-tiered Federal Government structure, comprising of a Federal Government and Provincial Governments as constituent units.

Principles

9. The key guiding principles on the basis of which this option has been developed are:
- i. Subsidiarity: assigning functional responsibilities to the smallest, lowest level of government capable of performing such functions. Arguments of economies of scale have been weighed against the possibilities of achieving greater political efficiency and of empowering the two levels of government.
 - ii. Equitable Distribution of Powers: Powers are distributed in two ways: one, between the Federal and Provincial Governments; and two, between the legislature, the executive and the judiciary. As a corollary, this equitable sharing of political, legal and administrative power are also intended to lead to distribution of power over sharing of financial and natural resources. The principle instruments used for this purpose are the legislative lists, which identify subjects over which the Federal and Provincial Governments have exclusive, concurrent or residual jurisdiction.
 - iii. Representation: The institutional structure proposed enables for a fair mechanism for representation of all constituent units based on proportional representation and thus addresses calls for representation that allows for more inclusive governance. This principle is applied not only terms of the political structures, but also the judiciary, the civil service and the armed forces, police, parliament, etc.
 - iv. Supremacy of the Constitution: The Constitution is the supreme legal instrument governing the Federal structure. All Federal and Provincial laws are subservient to the Constitution, which will detail the provisions of political, legal, administrative and fiscal autonomy, powers, responsibilities and accountabilities between the Federal Government and constituent units and between the legislature, executive and judiciary; identify citizens' right and responsibilities and institutional mechanisms for protecting, promoting and enforcing them; provide the institutions and mechanisms for intergovernmental relations, dispute resolution, policy coherence, coordination and cooperation; and outline procedures for amending the Constitution based on inclusion (no unilateral changes possible), responsiveness (to evolving political, cultural and economic needs) and responsibility (deliberative political negotiation process in public interest).

III. KEY FEATURES

10. We have noted earlier that there is no set template for Federalism and that the design of a Federal structure needs to be rooted in the political, economic, cultural and historical contexts of Yemen, while being informed by the experience of countries placed in similar situations. We also note the need to introduce innovations that are best suited to and aligned with the desires and aspirations of the country's citizen's in general and of the youth in particular, which not only allow them to enjoy new and enhanced political rights but also to have direct stakes in economic benefits which a Federal system will hopefully yield. Nevertheless, Federal countries do share some common characteristics which we have been mindful of while developing this option (Box 1).

BOX 1: COMMON CHARACTERISTICS OF FEDERATIONS

- Two orders of government, each in direct contact with its citizens;
- An official, constitutional sharing of legislative and executive powers, and a sharing of revenue sources between the two orders of government, to ensure that each has certain sectors of true autonomy;
- Designated representation of distinct regional opinions within federal decision-making institutions, usually guaranteed by the specific structure of the federal Second Chamber;
- A supreme written constitution that is not unilaterally modifiable but requires the consent of a large proportion of federation members;
- An arbitration mechanism (in the form of courts or a referendum) to resolve intergovernmental disputes;
- Procedures and institutions designed to facilitate intergovernmental collaboration in cases of shared domains or inevitable overlapping of responsibilities.

Source: Watts, Ronald L., *The International Evolution of Federal Systems in the Twentieth Century*, Institute of Intergovernmental Relations, Queen's University, 2001

11. In addition, we have considered--and indeed been confronted with--several issues in arriving at this option. These have ranged from the political to the economic to the administrative (Box 2). Each of these issues and possible solutions to address them has a bearing on the final design of the proposed option and we have tried to approach these from the perspective of a progressive, yet contextualised Federal structure for Yemen, based on the guiding principles outlined earlier.

BOX 2: CONSIDERATIONS FOR THE DESIGN OF OPTION 2

1. *Symmetric vs. Asymmetric Federalism* Should all constituent units have the same powers or should an allowance be made for asymmetry in the distribution of powers that enables some regions to have greater autonomy and powers than others?
2. *Direct vs. Indirect Democracy* To what extent should citizens be involved in the democratic process through exercise of voting rights? Should there be mechanisms and triggers for direct democracy which allows citizens to have direct decision making powers or should the conventional process of political representation and thus of indirect democracy prevail?
3. *The Imperative of Balancing Consociationalism with Confessionism* How can elements of consociationalism and confessionism be embedded within a design that strives to attend to the demands for both?
4. *Legislative Approvals: Single vs. Double Majority* Should legislation be subjected to single majority rule only or are there reasons to opt for double majority? Can the latter be applied in special circumstances?
5. *Creating Common and Shared Spaces* While addressing issues of ethnic, religious, economic diversities and disparities, what is the way in which common ground and convergence of objectives be achieved to forge national unity while respecting regional loyalty?
6. *Fiscal Contract* What should the shape, extent and content of the fiscal contract be? What kind of fiscal autonomy ought to be granted to Provinces and how do we achieve tax competitiveness and at the same time, tax harmonisation?
7. *Legitimacy* What are the appropriate tools and mechanisms for establishing and maintaining the legitimacy of the State and how best can these be organised at all order of government? How will the informal institutions be interfaced with the formal ones and what specific roles and powers can be given to the informal leaders?
8. *Revenue Sharing vs. Risk Sharing* Arguments for revenue sharing are bereft of calls for risk sharing. Is this an appropriate, sustainable or desirable model?
9. *Implicit vs. Explicit Recognition of Local Authorities* Should the Constitution explicitly recognise local governments? Or should their existence be implicit in the order of the Provincial tier of government or in other legislation?
10. *Dealing with the tyranny of the majority?* What kind of an electoral system can be put in place that can reduce the risk of the “tyranny of the majority” and enable building of voice and protection of rights of women and minorities?
11. *Avoiding the resource curse and Dutch Disease* How can we ensure that benefits from natural resources are shared equitably and also not lead to the continuation of the Dutch Disease in Yemen?

12. The key features of our proposal under this option are presented below:

NOMENCLATURE

13. **Proposal:** We propose to use Arabic names for governmental levels and for government officials, as follows:
- Federal Government to be termed as *Al Hakumat-ul Itahadiya*; Provincial Government as *Al Hakumat-ul Iqleem*; and Local Governments as *Al-Hakumat-ul-Muhaliya*
 - Districts: Urban/City Districts to be termed as *Medina*; rural Districts as *Muhafadah*
 - Towns/Municipalities as *Muntaqa*; Village Councils to be termed as *Mudiriya*
 - The National Assembly/Lower House to be termed as *Majlis Al-Noab Al-Itahadi*; the National Senate/Upper House as *Majlis-e-Shayukh Al-Itahadi*
 - The Provincial Assemblies/Lower Houses to be termed as *Majlis Al-Noab Al-Iqleem*; Provincial Senate/Upper House as *Majlis-e-Shayukh Al-Iqleem*
 - Local Councils to be named as *Majlis-e-Baladiya*
 - President to be termed as *Muhafiz Al-Hakumat Al-Itahadiya*
 - Prime Minister to be termed as *Rais Al-Wuzarah Al-Hakumat Al-Itahadiya*
 - Chief Minister of Provinces to be termed as *Rais Al-Wuzura-e-Iqleem*
 - Governor of Provinces as *Muhafiz Al-Iqleem*
 - Mayor of District to be termed as *Umdah Al-Medina* (for Urban Districts) and *Umdah Al-Muhafadah* (for Rural Districts)
 - Mayor of Towns (for urban districts) to be termed as *Umdah Al-Mantaqa* and of Village Councils as *Umdah Al-Mudiriya*
14. **Justification:** Since Yemen currently has only one level of government under the Unitary State, there is a need to (a) establish a distinction between the Federal and Provincial governments through distinct nomenclatures; (b) at the Provincial level, there is a need for distinction between what are currently termed as Governorates (Muhafizat) and the new order of government we term as Provinces or Iqleem; and (c) at local authorities level, it is proposed to retain current nomenclatures to minimise confusion for the general public, although during the transition period leading to a Federal system, a communication and public outreach and awareness program would help familiarise the public with the new structure and its nomenclature. Nevertheless, at the local level, since we are proposing a formal, legal distinction

between urban and rural areas, separate titles for urban and rural districts are proposed.

TIERS

15. **Proposal:** Two tiers of government— Federal (*Al Hakumat-ul Itahadiya*); and Provincial (*Al Hakumat-ul Iqleem*).
- Number of provinces and their geographical boundaries needs to be determined as indicated in subsequent sections.
 - The Constitution would not recognise Local Authorities as legal tiers of government, but will contain a provision whereby it would be Constitutionally incumbent upon all Provincial Governments to establish Local Authorities with full administrative, fiscal powers under elected representatives, within a specified period of time from the point of establishment of that Provincial Government. The Local Authorities would work under the Provincial Governments and the latter will devolve certain powers, and decentralise functions and resources to the former. The nature and extent of these powers will be left to the Provincial Governments, but the principles and guideline will be outlined in the Constitution and included as a Schedule.
 - Local Authorities to comprise Districts (Urban/City District or *Medina* and Rural District or *Muhafadah*), Towns (*Muntaqa*) and Village levels (*Mudiriya*), whose number and geographical distribution would be determined according to defined criteria, determined by the Demarcation Commission (discussed subsequently under this option).
16. **Justification:** Most stakeholders have called for a Federal system that provides for regional autonomy. This two-tier structure provides the framework for a unified Yemen with political devolution that creates a new tier of government (Provinces/*Iqleem*) and also for decentralised governance within the Provinces/*Iqleem*. There is wide variation in terms of how the Federations around the world are established, but every Federal country has at least two tiers of government, with some having Constitutionally recognised three tiers (e.g. Nigeria). In the context of Yemen, a two-tier model is proposed based on the expressed preference for such a model, economic and institutional capacities and the fact that it provides for decentralised governance within a defined scope.

GOVERNMENT STRUCTURE

17. **Proposal:**

- Parliamentary, bi-cameral form of Federal (*Al Hakumat-ul Itahadiya*) and Provincial (*Al Hakumat-ul Iqleem*) governmental structure. The Parliament at each level would consist of a Lower House (*Assembly/Majlis Al-Noab*) and an Upper House (*Senate/Majlis-e-Shayukh*). The number of seats in either House at both the Federal and Provincial Government levels would be determined by a Delimitation Commission.
- President of the Federation will be the Head of State.
- The Prime Minister will be the Chief Executive Officer and Head of Government of the Federal Government.
- At the Provincial level, the Federal structure would be mirrored, with a Provincial Assembly/Lower House (*Majlis Al-Noab Al-Iqleem*) and a Provincial Senate/Upper House (*Majlis-e-Shayukh Al-Iqleem*).
- The Provincial Chief Minister will be the Chief Executive Officer and Head of the Provincial Government.
- There will be a Governor of each Province, who will serve as a representative of the State, as opposed to the Chief Minister, who will be the Head of Government.
- Local Authorities at the District level will have Local Councils, each headed by an elected Mayor.

18. **Justification:** By most accounts and certainly from our own interaction with stakeholders, it is evident that a Presidential form of government will likely be unacceptable to Yemenis. This, we feel, is not necessarily because Yemenis have any particular disregard for the Presidential system as such, but because their experience with the Presidential system has become stigmatised and synonymous with deliberate politics of disingenuity, obfuscation, oppression and rent-seeking. A bi-cameral, Parliamentary form of government is in line with the preferences voiced by different political parties and other stakeholders. Yemen already has a bi-cameral system, except that the Majlis-e-Shura is an advisory council, while in our proposal, its successor, the Majlis Al-Shayukh will not only be the forum for representation of the Provinces, but have very strong and substantial legislative powers. This is in keeping with the Federalist model and principles, which provides political space for constituent or federating units in the Federal Government also through the Upper

House and this way, makes them enjoy a strong sense of participation in shaping national public policy and thus forging national unity; furthermore, a robust *Majlis Al-Shayukh* will also serve as an institutional arrangement for minimising the risk of any partisan, parsimonious or patronage politics which the ruling party or ruling coalition in the *Majlis Al-Noab* or Lower House/House of Representatives might attempt.

19. This same principle of no single party or political coalition in power doing anything they wish, and of inclusive legislation, policy making and decision making, applies equally to the Provincial levels, hence our proposal for a bi-cameral structure even at the Provincial or *Iqleem* level. Bi-cameral Provincial legislatures are extremely rare in developing countries because regional level politicians want to minimise central control over legislation and public policy, but are unwilling to devolve their own political, legislative or administrative powers. Having a bi-cameral Provincial legislature will reduce chances of Provincial Governments veering towards any centralist-control tendencies and their absence could result in Provincial Governments dictating to the Districts, as happens in most Federal countries. If we do not have a bi-cameral Provincial legislature, all we could be doing is to shift centralisation from the centre to the region. Moreover, given the political, ethnic and other divides in Yemen's political economy landscape, a bi-cameral legislature at both Federal and Provincial levels would serve to bridge the gaps of trust and act as an institutional mechanism for building diversity of voice and representational politics at both orders of government.

20. **Proposal:** The electoral system is a critical element of any political system and issues of transparency and independence of the process and of appropriate representation and participation are key to developing a robust and inclusive democracy in Yemen. Without going into the details of the kind of voting system is adopted in Yemen, we propose the following principle and measures:

- Elections must be *general* (i.e. have no restrictions in terms of gender, income or any other factor that is discriminatory, with any exclusions from the right to vote clearly identified in election laws and communicated to the public); *equal* (i.e. every vote carries the same weight and in doing so allows for proportional representation); *fair* (i.e. conducted in an impartial manner by an independent, non-partisan election organisation, has an open ballot counting process, accessible polling places, provides equitable opportunities for the electorate to receive political and voter information and provides for equitable treatment of electors, candidates and parties by elections officials, the government, the police, the military and the judiciary); *free* (i.e. fundamental rights and freedoms such as the freedom of speech, registration, association, assembly, access to polls, exercise the franchise and to question, challenge or file complaints are respected, enabled and facilitated through legislation and election system); and *secret* (i.e. the voter's decision is unknown to anyone else).
- The reforms for further improving the functioning, processes and performance of the Supreme Commission for Elections and Referendum (SCER) are proposed to be expedited so as to strengthen its role as a Constitutional, independent and non-partisan institution. Under the SCER, a Delimitation Commission is proposed to be established, responsible for identifying electoral constituencies. The Delimitation Commission would comprise of nominees of each major political party, technical experts and independent observers and would present its recommendations to the National Election Commission, who in turn would publish the report and recommendations for the general public, invite feedback, address complaints and disputes before finalising it.

- President to be elected through an electoral college of Federal Upper and Lower Houses (*Majlis-e-Shayukh* and *Majls Al Noab Al-Hakumat Al-Itahadi*) and will be the Head of State³³.
- Prime Minister of the Federal Government will be elected from within the elected members of the National Assembly/House of Representatives (*Majlis Al-Noab Al-Itahadi*)
- National Assembly/House of Representatives (*Majlis Al-Noab Al-Itahadi*) members to be elected directly through universal suffrage and Senate (*Majlis-e-Shayukh Al-Itahadi*) members through an electoral college comprising of National Assembly/House of Representative and Provincial Assembly/Provincial House of Representative members.
- Provincial Assembly/House of Representative (*Majlis Al-Noab Al-Iqleem*) members would be elected through universal suffrage and Provincial Senate/Upper House (*Majlis-e-Shayukh Al-Iqleem*) members through an electoral college comprising the members of the Provincial Assembly and the members of the District Local Councils.
- The Provincial Chief Minister (*Rais Al-Wuzura Al-Iqleem*) will be elected from amongst the members of the Provincial Assembly (*Majlis Al-Noab Al-Iqleem*)
- Governor of each Province to be elected through an electoral college comprising the members of the Provincial Assembly (*Majlis Al-Noab Al-Iqleem*) and the Provincial Senate (*Majlis-e-Shayukh Al-Iqleem*).
- Local Authorities to have directly elected Local Councils, based on universal suffrage.
- Mayors and Deputy Mayors of each Local Council to be elected from among the members of the Local Councils.
- At both tier of government, Federal (*Al Hakumat-ul Itahadiya*) and Provincial (*Al Hakumat-ul Iqleem*), and in either House (Upper House and Lower House) at least 30%) of seats will be reserved for women and at least 5% seats for minorities. At the Local Council level, the Provinces would be allowed to determine the reservation of seats for women and minorities depending on their local and cultural contexts, but no less than 15% for women and at least one minority seat in every Council.

³³ In some Federal countries, the President is also elected directly. However, in the context of Yemen, we believe it would be a better arrangement for the President/Head of State to be elected through a system which allows the federating units (i.e. provinces) to have a say in the election. If direct elections take place, the areas with greater population will hold sway. However, if as we suggest the President is elected through an electoral college of National Assembly and Senate (in which all provinces/regions have representation), the President will then become a more representative office

- Under the aegis of the Supreme Commission for Elections and Referendum, an agreement would have to be reached between political parties to arrive at an estimate of the population for the country as a whole as well as for each electoral constituency, since the census is outdated. This would pave the way both for delimitation and for determination of total seats in the legislatures.
 - A mixed elections system—or a variant thereof—that strives to capture the benefits of both a national and regional proportional system as well as a single constituency based system, is proposed to be used.
21. **Justification:** In order to build a participatory democracy, it is important that the electoral system is designed in a manner that provides for inclusion and diversity, has all the requisite elements of transparency and independence and can assuage stakeholder discontent over issues such as delimitation of constituencies. Indeed, the role of an independent SCER and the proposed Delimitation Committee assumes great significance, given the widespread perception of gerrymandering³⁴ and/or malapportionment³⁵ by earlier -governments in Yemen and in the light of the fact that there is ample evidence of delimitation disputes leading to post-election violence in several countries, including boundary disputes in Nigeria leading to killing of demonstrators and displacement of more than a thousand people in 2003; attacks on police officers and polling stations in the Indian State of Andhra Pradesh in the 2009 elections as a protest against changes to the size and composition of Mahbubnagar constituency; and of violent attacks on a Minister in South Sudan because of his role in moving a village from one constituency to another³⁶. Population is the most commonly used criteria for delimitation purposes and given that the last census in Yemen was more than a decade ago, there will likely be substantial disputes regarding the redistricting process, unless an agreement on the population estimates and their source, is reached between political parties, as we have suggested.
22. Moreover, stakeholders we met clearly expressed a preference for directly elected representatives, hence the proposal that election to all legislatures be on a direct election basis under universal suffrage. Just as with the structure of a Federal State, there are a variety of options available in terms of the election system. In Africa for

³⁴ This refers to the process in which electoral constituencies are drawn in a way that favors a particular political party or a particular candidate.

³⁵ Simply put, this means unequal representation in a representative forum or body, such as an Assembly.

³⁶ Gustafsan, M., Electoral Design: Proportionality, Representation, and Constituency Boundaries in Sudan's 2010 elections, Rift Valley Institute, 2010

example, several systems have been used by countries emerging from conflict or seeking stabilisation (Table 1).

TABLE 1: ELECTORAL SYSTEMS USED IN AFRICA	
Electoral system	Description
Plurality system	The candidate with the most votes wins, regardless of whether he or she wins the majority of votes.
Majoritarian system (French two-ballot)	The candidate must win the majority of the votes (50% plus one). If no candidate wins a majority in the first round, then a run-off election is held to decide between the two candidates with the most votes from the first election.
Proportional representation	The percentage of votes received reflects the number of seats won by candidates from a particular party. Seat allocation is therefore determined by a formula and candidate lists.

Source: Gustafsan, M., Electoral Design: Proportionality, Representation, and Constituency Boundaries in Sudan's 2010 elections, Rift Valley Institute, 2010

23. In the light of the disparity in population in different regions of Yemen and the conflict over adequate representation of the Southern region, the Plurality system and the Majoritarian system may not be best suited to Yemen—for reasons of bias in favour of the more populous areas and the possibility of the ‘*tyranny of the majority*’³⁷, respectively—although this is subject to further expert debate. In view of our understanding of the issue and in response to the calls made by different stakeholders, a proportional representation system using a mixed election process has been proposed. However, under the mixed election system too there are a number of options available, including on the criteria and method for determining seats, and whether a party-list based proportional system is used (and within this whether an Open List or Closed List system is adopted), or a Single Transfer Vote system is decided on. We are unable to offer any specific proposal in this respect and leave this open for discussion and advice, including through the Elections Project being run by UNDP, in which they are working closely with the Supreme Commission for Elections and Referendums to improve the election system in Yemen. However, political parties in Yemen could do well to review the process and outcome of what is

³⁷ This envisions a scenario in which decisions made by a majority place its interests so far above those of an individual or minority group as to constitute active oppression, comparable to that of tyrants.

known as the Connecticut Compromise³⁸, which resulted in an agreement between the representation of the large and small States and the legislative structure under the Constitution of the United States of America, as an example of how disputes on representation under a Federal structure can be resolved.

ADMINISTRATIVE DIVISION

24. **Proposal:** We propose that Yemen be administratively divided into:

a. **Federal Territories** This would include:

- i. Sana'a City as the Federal Capital Territory
- ii. Sea Ports
- iii. Islands, including the Socotra Archipelago
- iv. Any districts or regions that do not combine to form a Province or do not wish to be part of a Province.
- v. Charter Cities, established through legislation, based on defined criteria and governed by defined institutional mechanisms.

TABLE 2: ADMINISTRATIVE DIVISION IN YEMEN				
No.	Governorate	Capital	No. of Districts	Population
1	Sana'a- Capital	Sana'a city	10	1,747,834
2	Aden	Aden city	8	589,419
3	Taiz	Taiz	23	2,393,425
4	Sana'a Governorate	Al Rowdah	16	919,215
5	Ibb	Ibb	20	2,131,861
6	Hodeidah	Hodeidah	26	2,157,552
7	Hadramout	Mukalla	30	1,028,556
8	Hajah	Hajah	31	1,479,568
9	Dhamar	Dhamar	12	1,330,108
10	Lahj	Al Houtah	15	722,694
11	Al Baidah	Al Baidah	20	577,369
12	Abyan	Zunjobar	11	433,819
13	Shabwa	Ataq	17	470,440
14	Sa'ada	Sa'ada	15	695,033
15	Al Mahweet	Al Mahweet	9	494,557

³⁸ Signed in 1787 and also referred to as Sherman's Compromise, after Roger Sherman, representative of the Connecticut delegation in the Constitutional Convention.

b. Provinces The number and shape of the provinces are left to be determined by a <u>Demarcation Commission</u>	16	Marib	Marib	14	238,522
	17	Al Jouf	Al Hazm	12	443,797
	18	Al Mahrah	Al Jaidah	9	88,594
	19	Amran	Amran	20	877,786
	20	Al Dale'a	Al Dale'a	9	470,564
	21	Raimah	Al Jabeen	6	394,448
		Total	21	333	19,685,161

(Appendix 10) However, we suggest that the number of provinces and their geographical boundaries will not be equal to the existing Governorates, which are both far too many for a country the size of Yemen (Table 2) and appear to have been carved out not on the basis of any considered process, but on political or administrative expediency. Moreover, the population size and density varies considerably across the country, leading to difficulties in equitable resource distribution and effective management and attendant variations in fiscal capacity and costs of service delivery.

In order to arrive at a more appropriate and relevant administrative division it is proposed that a combination of criteria be used for determination of the division. These include, but not limited to, population (size and density); economic viability; cultural and linguistic similarities; and geographical and topographical considerations (natural boundaries such as mountains, deserts etc.). The use of this multi-criteria based administrative division would enable the establishment of more politically, administratively and economically viable administrative units.

For this purpose, we propose the establishment of a Demarcation Commission as a Constitutional body, tasked with researching and developing proposals for approval by the Constituent Assembly. There could be two modus operandi for this Commission to follow: one, it could determine the administrative division in Yemen under the Federal system *using technical analysis based on the kind of criteria, or a combination thereof, mentioned above* as a first line of effort; or, it could determine and publish guidelines on the basis of which proposals for Provincial administrative divisions could be arrived at through political negotiations between different regions and districts comprising these districts. These guidelines would indicate the process to be used (e.g. open meetings, documentation of decisions, minimum number of signatories to the proposal, at least 2/3 votes in every existing District Local Council), set out limitations (e.g. capping size of number of districts in a Provinces or suggesting floors for a Province to be proposed) and indicate the deadline for arriving at the negotiated proposal. Regions and areas (Districts) which fail to arrive at a politically negotiated proposal would by default, form part of the Federal Areas till such time

as the Demarcation Commission is able to carry out its technical analysis and suggest the new administrative division. The final demarcation of administrative division would be protected through appropriate legislation.

We further propose that both Federal and Provincial Governments be empowered to establish Charter Cities, as a progressive variant of Special Administrative Regions and with a view to integrating with the global community, should they choose to do so and based on defined criteria for establishing such cities and governed by different institutional mechanisms from the rest of the areas within the jurisdictions of the Federal and Provincial Governments.

In addition, with an eye on the urbanisation trends and the future rebuilding of the national economy around city-based economies, we propose that a legally defined distinction be made between urban and rural areas in the administrative division within provinces. This would enable for more equitable and targeted allocation of fiscal autonomy, financial and administrative powers and financial resources. The Local Authorities Law would articulate the definition, scope, structure, functions and powers of the urban (*Medina*) and rural (*Mudirya*) districts.

25. **Justification:** Administrative division is as every bit as contentious an issue as electoral delimitation and indeed the two are linked closely, since the latter is largely based on the former, although they may not necessarily always overlap, depending on the criteria used. For all the technical analysis which needs to go into demarcation of administrative boundaries, this is essentially a political function, since resource allocations, jurisdiction for exercise of political power and influence and the efficiency and capacity of governance and fiscal management, rests on the way in which the Province is carved out. The political nature of this issues is the reason why we have proposed that the task be left in the hands of a Demarcation Commission, which adopts either one of the two proposed operational modes suggested i.e. carry out the task itself through a technical analysis, or provide a framework for the political process yielding proposals. The incentive system built into the latter makes us believe that would perhaps expedite the process, since areas that fail to arrive at a political negotiation based on the Commission's technical framework, will be placed under the Federal Government—which will likely not be the favoured route for the regions. This approach has been used in several countries and enshrined in their Constitutions, including in Uganda and Somalia (Box 3).

BOX 3: CONSTITUTIONAL PROVISIONS FOR DEMARCATION

Uganda

Article 178: (1) Two or more districts may cooperate to form a regional government to perform the functions and services specified in the Fifth Schedule to this Constitution.

(2) A district shall not be taken to have agreed to enter into a cooperation arrangement to form a regional government unless-

- (a) the proposal to join the regional government has been approved by resolution of the district council by a majority of two thirds of the members of the district council; and
- (b) the decision of the district council has been ratified by not less than two thirds of the subcounty councils in the district.

Article 178 A: (1) A district which does not wish or is not able to enter into a cooperation arrangement to form a regional government shall be paid an equalisation grant.

Somalia

Article 48 (2): No single region can stand alone. Until such time as a region merges with another region(s) to form a new Federal Member State, a region shall be directly administered by the Federal Government for a maximum period of two years.

issue of administrative division and although there did not appear to be sufficient homework done in this respect, we were able to gather a sense of the kind of division they had in mind. Based on these discussions and as a very crude simulation exercise in trying to see how the use of different criteria could shape the administrative division, we developed a couple of scenarios as given on the next page. As may be evident from these scenarios, the shape and size of the Provinces, and their economic and political power will vary considerably depending on the criteria used. Furthermore, in these scenarios, the number of districts has been kept the same for purposes of simplicity, but in reality, there is clearly a need for reducing their number and redrawing their boundaries; in practice, that is what will likely happen and this process would be in conjunction with the redistricting exercise for electoral constituencies. Again, it is important to emphasise these scenarios are not firm proposals by any means, are illustrative in nature and are intended to only serve as indicative approaches and to underscore the kind of complexities involved in the process.

Scenario I: Administrative Division Based on Economic and Geographic Equality					
Province	Constituent Regions	Population according to the 2004 Census	Total Area (KM2)	No. of Districts	Sea Port/Coast Area of the Province
One	Taiz – Lahj – Aden – Abyan	4,139,357	37,090	57	Coasts of Abyan, Lahj and Aden
Two	Al Mahra - Hadramout	1,117,150	234,675	39	Almahra, Hadramout Coast

Three	Aljawf – Mareb – Sana'a – Almahweet – Raima – Dhamar	3,820,647	80,705	69	None, but could Include two Coastal Districts from Hodeidah
Four	Saa'da – Al Hodeidah – Hajah – Amran	5,209,939	41,832	92	Midi and Abs Coasts in Hajah and Hodeidah Coast
Five	Albaidha – Ibb – Aldhalea - Shabwah	3,650,234	57,606	66	Shabwa Coast

- Sana'a City to be the Federal Capital Territory
- Islands, including the Socotra Archipelago to be part of Federal Territory
- The proposed division of administrative units in accordance with this model uses the following principles:
 - a. Consolidating national unity in its complete and comprehensive sense, establishing Yemeni national identity and preserving the cultural ties of Yemenis.
 - b. Achieve balance in terms of population and demographic weight between the new administrative regions, so that the difference between the regions is reasonable and acceptable.
 - c. Achieve equity in distribution of economic resources between the regions, which will support the development efforts that are spatially different, as far as possible and as informed by geological maps and maps of natural resources.
 - d. Every region has a sea port to facilitate import and export activities, as well as economic resources offered by the coast in the field of tourism, fisheries and other resources that contribute to advancing development in the regions in a balanced manner.

Scenario 2: Administrative Division Based on Geographical Considerations and Topography						
Province	Constituent Regions	Population according to the 2004 Census	Area (KM2)	Districts	Population of Proposed Province	Area of Proposed Province (KM2)
Eastern	Hadramout	1,028,556	163,378	30	1,560,947	270182
	Al Mahra	88,594	67,297	9		
	Al Jawf	443,797	39,507	12		
Northern	Saa'da	695,033	12,367	15	7,256,681	75435
	Hajja	1,479,568	8,307	31		
	Amran	877,786	7,900	20		
	Sana'a	919,215	11,907	16		
	Mareb	238,522	17483	14		
	Almahweet	494,557	2,328	9		
	Raima	394,448	1,894	6		
	Al Hodaida	2,157,552	13,249	26		
Southern	Shabwa	470,440	38,991	17	9,119,699	102318
	Abyan	433819	13,684	11		
	Al Baidha	577,369	9,275	20		
	Dhamar	1,330,108	7,586	12		
	Al Dhale'	470,564	3,996	9		
	Ibb	2,131,861	5,344	20		
	Taiz	2,393,425	10,008	23		
	Lahj	722,694	12,684	15		
	Aden	589,419	750	8		
<ul style="list-style-type: none"> - Based on the principal of geographic contiguity and historical division - Sana'a City to be the Federal Capital Territory - Islands, including the Socotra Archipelago to be part of Federal Territory 						

26. It is useful to note that Federations around the world have substantially different divisions, based on their local contexts, needs and political aspirations and accords (Box 4).

BOX 4: ADMINISTRATIVE DIVISION IN FEDERATIONS AROUND THE WORLD

Argentine Republic (23 provinces + 5 regions + 1 national territory + 1 federal district)
Commonwealth of Australia (6 states + 1 territory + 1 capital territory + 7 administered territories)
Federal Republic of Austria (9 Länder)
Belgium (3 regions + 3 cultural communities)
Bosnia Herzegovina (2 administrative divisions)
Brazil (26 states + 1 federal capital district)
Canada (10 provinces + 2 territories + Aboriginal organizations)
The Federal and Islamic Republic of the Comoros (3 islands)
Ethiopia (9 provinces)
Federal Republic of Germany (16 Länder)
Republic of India (28 states + 7 union territories + 1 federacy + 1 associated state)
Malaysia (13 states)
United Mexican States (31 states + 1 federal district)
Federated States of Micronesia (4 states)
Federal Republic of Nigeria (30 states + 1 federal capital territory)
Islamic Republic of Pakistan (4 provinces + 6 tribal areas + 1 federal capital)
Russian Federation (89 republics and various categories of regions)
St. Kitts and Nevis (2 islands)
South Africa (9 provinces)
Spain (17 autonomous regions)
Switzerland (26 cantons)
United States of America (50 states + 2 federacies + 3 associated states + 3 local home-rule territories + 3 unincorporated territories + 130 Native American domestic dependent nations)
Republic of Venezuela (20 states + 2 territories + 1 federal district + 2 federal dependencies + 72 islands)
Federal Republic of Yugoslavia (2 republics)

Source: "Comparing Federal Systems - Second Edition" - Ronald L. Watts

27. The reasons for proposing a distinction between urban and rural areas are two-fold: firstly, they allow us to recognise the different structures, systems and functions which an urban city district has to perform and to align allocation of managerial capacity, financial resources and powers accordingly; the dynamics, politics and economics of cities is an important consideration for a Federal design and one that is quite often not given adequate analytical attention it requires³⁹; and secondly, they enable cities to unleash the benefits of economic development as drivers of economic growth. This is not to suggest that the rural areas are in any way less important. Indeed, majority of the population lives in rural areas and despite high urbanisation trends, will continue to do so in the medium term. This proposed distinction will in fact also help focus on specific issues of rural areas, such as investing in agriculture, improving irrigation and drinking water supply and to enhance coverage and quality of basic services such as health and education, by way of more contextualised planning and allocation of resources that are responsive to local needs.
28. As regards Charter Cities, the proposal is a take on asymmetric federalism that exists in several countries in form or the other, such as in Malaysia (grant of special rights

³⁹ King, L., F, *Cities, Subsidiarity and Federalism*, Forthcoming in James Fleming and Jacob Levy, eds. *NOMOS: Federalism and Subsidiarity*, 2012

and powers for taxation, citizenship, trade to the States of Sabah and Serawak); Pakistan (allowance for different laws and institutional systems in the Federal Administered Tribal Areas); Canada (Quebec province assigned concurrent powers to impose corporate and income taxes); Iraq (Kurdistan recognised as a Federal region, but assigned special administrative region status); and Switzerland (different languages officially recognised for different regions). The Charter Cities concept is also a variant of the special economic zones or the free zones idea, in that we propose it as a possible partnership between one or more regions within a country (such as two Provinces), between two or more orders of government (such as between Federal and Provincial governments), or between two or more sovereign governments (such as between Yemen and Saudi Arabia). It is also useful to point out that while we propose to adhere to the characteristics (Appendix 11) of the original concept of Charter Cities espoused by Paul Romer⁴⁰. We believe, for example that the limitation of Charter Cities being built on vacant pieces of land or of the partnership to be between two or more nations, need not be adhered to as they might create rigidities, not conform to political economy considerations and may be embroiled in geo-political issues that detract from the basic objective of creating an administrative area that is governed by more efficient rules. We are mindful of the fact that given Yemen's security concerns in areas where vacant land *does* exist, as well as other issues such as a legacy of weak institutions, the idea of Charter Cities may be scoffed at by some critics, but propose this concept as an exciting and ground-breaking approach towards development of new cities or revitalisation of existing ones, leveraging the opportunities provided by coastal areas and diversifying the economy away from oil-dependence, and to build on this model in view of Yemen's impending accession to the WTO and its desire to establish itself as a regional player of significant import. Consider, for example, the possibility of conversion of Aden or Hodeidah as Charter Cities—transforming them into global cities, attracting foreign direct investments, creating jobs and building a robust, market led economy, based on a new set of rules from the traditional model of city governance. This would be in line with the demands raised by several stakeholders for greater autonomy for different city-regions. Moreover, we are *not* suggesting that these Charter Cities must necessarily be built, but only that a provision be made in the Constitution and for the decision to be made by Federal and Provincial Governments after due consideration and analysis. Globally, despite some definitional ambiguities, Hong Kong and Macau, Addis Ababa and Dire Dawa in

⁴⁰ See for example, Romer, Paul M. 2010. “*What Parts of Globalization Matter for Catch-Up Growth?*” American Economic Review, 2010 and www.chartercities.org

Ethiopia are considered chartered cities; a Chartered City following Romer's conception is being developed in Honduras (Box 5) while the process of developing a Charter City was stymied in Madagascar, following toppling of government in 2009.

BOX 5: THE HONDURAS EXPERIENCE OF CHARTER CITIES

Following the coup in 2009, the new Honduran administration began efforts to establish a Charter City. By February 2011, the Honduran National Congress had amended its constitution to authorize a special development region — the *Región Especial de Desarrollo* (RED). And in July 2011, the Honduran congress passed a constitutional statute that broadly defined how the RED would be governed. To help insulate the special zone from future political instability, the Honduran congress gave it a high degree of autonomy, stopping short of giving up sovereign control. The land would remain part of Honduran territory, and the government would place it in a trust to be managed by RED authorities, including a governor and a Transparency Commission, both appointed by the president of Honduras. Initially, the Transparency Commission would oversee the RED's legislative and executive functions, including the governor. As a check on the commission's authority, Honduras retains the power to change the RED's enabling legislation with a two-thirds majority of the Honduran congress and a referendum among residents of the RED. The Honduran Congress is currently fighting off a constitutional challenge to the RED while working to determine the boundaries of the zone, which is expected to be 1,000 square km, or about the size of Hong Kong. Furthermore, it has yet to publish a decree to give the Transparency Commission legal clout. In September 2012, it also signed with Michael Strong, an American activist and entrepreneur, a preliminary deal for a small project to build new housing and create jobs. Many see this as a down-scaling of the original Charter City idea and Romer himself has expressed disappointment over this recent move. What this experience reveals is the risk of political expedience and quest for quick-wins that could threaten the implementation of the Charter City idea.

Sources: Rhodes, K, *Testing Charter Cities and Unchartered Territory*, The Economist, 6 October 2012

INTEGRATING TRADITIONAL AND COMMUNITY LEADERSHIP

29. **Proposal:** The influence and authority of informal institutions in Yemen outstrips that of the formal ones in large parts of Yemen. While common perceptions of this network of informal institutions, in particular the tribal leaders or *Shaikhs*, tends to be negative, we propose to leverage their influence over communities, creating space for their interface with formal institutions at both orders of government and in this manner, to achieve a confluence of interests. Similarly, the private sector and civil society organisations, including youth and women's organisations, play an important part in policy advocacy and community outreach. In order to mainstream the contributions of these institutions and to build a cooperative framework for operations rather than an adversarial one, the following measures are proposed:

- i. Accord Constitutional recognition to the institution, role and status of Tribal and Religious Leaders as important elements of Yemeni society.
- ii. Include the provision for a Council of Elders/Traditional Leaders at the Federal and Provincial Government levels in the Constitution. Establish this Council under an Act of Parliament that defines the structure, functions and linkages of this Council with other formal institutions (Appendix 12).

- iii. Give legal coverage to customary law and decisions under it by establishing Customary Law Courts, provided these do not violate the Constitutional provisions of protection and promotion of human rights and freedoms, are non-discriminatory and are employed for defined purposes and jurisdictions.
- iv. Establish Mediation Committees at every District level to serve as an Alternate Dispute Resolution mechanism. The Local Authorities Act to include provisions in this regard.
- v. Include private sector representatives in the National Economic Council of Yemen.
- vi. Establish a Provincial and District Citizens' Advisory Committee (CAC) as a Constitutionally recognised forum that assists the Provincial Cabinet and the District Council in terms of improving planning, budgeting and oversight of public investments and expenditures.
- vii. Institute a Citizen's Budgeting process and include this as part of the Constitutional provisions on budgeting and planning. The Provincial and District Citizens' Advisory Committee mentioned in (vii) above would review the draft budget prepared by the Provincial Assembly or the District Local Council as the case may be, *prior* to its tabling before the legislatures; the CAC would advise on the needs assessment and prioritisation of the annual provincial budget and present a Citizen's Budget, as an alternative to the official budget. The Assembly or Local Council would review these alternative proposals, include those which are in line with their assessment of public choice and need and provide a formal response, to be included in the budget document, detailing the reasons why recommendations under the Citizen's Budget were not included in the official budget.

30. **Justification:** The role, power, influence and authority exercised by civil society, including tribal or traditional leadership, the private sector and the religious leaders is significant and beckons to be leveraged for public interest. Hence the proposals to incorporate their roles and assigning them responsibilities that provide a long term basis for their mainstreaming, integrating and convergence with the formal sector. Yemen would not be the first one to do this, since a substantial number of Constitutions and governmental structures make specific provisions for this purpose (Table 3).

TABLE 3: PROVISIONS RELATING TO TRADITIONAL LEADERS IN CONSTITUTIONS	
Country	Provision
Namibia	Article 102 (5): There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

Somalia	<p>Article 52 (h): The Federal Government and Federal Member State governments shall ensure that meetings between the Presidents of the Federal Member States and high ranking officials be held regularly to discuss issues that affect their territories, including relations and dialogue amongst traditional leaders, and the protection and development of traditional law.</p>
South Africa	<p>Article 211: (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs. (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.</p> <p>Article 212: (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities. (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law- (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and (b) national legislation may establish a council of traditional leaders.</p>
Marshall Islands	<p>Article VI Section 4 Sub-Section 1: (1) The Traditional Rights Court shall be a court of record; shall consist of panels of 3 or more judges selected so as to include a fair representation of all classes of land rights; (2) The size, membership and procedures of the Traditional Rights Court shall be determined by the High Court unless and until the Nitijela makes provision for those matters by Act. (3) The jurisdiction of the Traditional Rights Court shall be limited to the determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice in the Marshall Islands.</p>

Furthermore: (a) Customary Laws exist and are respected by significant segments of the population in Yemen; (b) global experience shows the informal institutions are a major and very effective source of dispute resolution, in some cases resolving more than 80% of all disputes⁴¹; (c) traditional leaders and their role is held in high esteem in several countries (Box 6); (d) In Yemen's own case, as has been argued by several authors, the role of tribal

BOX 6: Perceptions of Traditional Authorities—Tribal Chiefs in Ghana

Perceptions of chiefs, in Ghana	%
Chiefs unify the community.	90
Chiefs should continue their traditional roles.	77
Chiefs contribute to ethnic conflict.	60
Chiefs contribute to national unity.	80
Chiefs can contribute to economic development.	90
Chiefs do not have respect of the community.	43

Source: Abotchie 2006.

leaders is 'overlooked and misrepresented' and that they provide social order in a country that has veered towards a collapse of the formal institutions and that they have resolved local conflicts and prevented escalations in political tensions⁴²--this assertion is supported by the recent signing of a petition by *Shaikhs* in Marib, against attacks on gas and oil pipelines, stating they will '*pursue saboteurs of oil pipelines and electricity towers, handing them over to the state for prosecution*', a move applauded by Marib's Governor, Sultan Al-Arada⁴³; (e) A report suggests that almost

⁴¹ A Study on Informal Justice Systems, UNDP, UN Women, UNICEF, 2012

⁴² Al-Dawsari, N., *Tribal Governance and Stability in Yemen*, The Carnegie Papers, 2012

⁴³ Yemen Times, 19 December 2012

90% of conflicts in Yemen are resolved through use of informal institutions and Customary Law⁴⁴; moreover, the Arbitration Act of 1992 was a step towards bridging the formal-informal justice gap, acknowledging as it does, the role of tribal arbitration—our proposal for District level Mediation Committees builds on this and experiences of other countries, such as Pakistan, where *Musalihat Anjuman* (Forums for Mediation) were established in every district; and (f) the reasons for proposing the inclusion of private sector in the National Economic Council is self-evident—economic policy needs to be shaped in conjunction with the business community since they are the ones impacted by it. Likewise, the Citizens Advisory Committee and assigning it responsibility as regards the development and dissemination of Citizen’s Budget, is driven both by a desire to give the CAC teeth, but also to put in place a system that strives to integrate the formal-informal institutions in key functions such as budgeting and oversight. We are aware that not all aspects of traditional and informal institutions are positive, but based on the principle of inclusion and from a strategic perspective, believe that it would be a more prudent approach to try and make them part of the solutions, rather than continue to view them as part of the problem, or the problem itself.

DIVISION OF LEGISLATIVE AND EXECUTIVE POWERS

31. **Proposal:** In a Federation, the Constitution provides for division of legislative powers between the Federal Government and the constituent units—in our case, between the Federal Government/ *Al Hakumat-ul Itahadiya* and the Provincial Government / *Al Hakumat-ul Iqleem*. The instruments used to achieve this objective are the legislative lists, which enumerate the subjects which are under the jurisdiction of the orders of Government, and specific provisions in the Constitution regarding the extent and exercise of Executive authority.
32. Under this option, we propose that there be two legislative lists: a Federal Legislative List (which specifies subjects on which only the Federal Government can legislate); and Concurrent Legislative List (which specifies subjects on which both Federal and Provincial Governments can legislate). As per the norms of Constitutional Law, subjects not enumerated in the Federal Legislative List and subjects and/or functions not enumerated in the Concurrent List, automatically fall under the Provincial jurisdiction.

⁴⁴ *Conflict Resolution in Yemen Today*, GTZ, 2006

Federal Legislative List

- i. Foreign Affairs
- ii. Defence
- iii. Maritime Security
- iv. Nationality, Citizenship and Naturalisation, Immigration, Migration and Emigration
- v. Health, with Federal jurisdiction limited to the extent of National Health Policy, Standards and Regulation; National Drug Regulatory Authority of Yemen; National Medical & Dental Council; delivery of health services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- vi. Education, with Federal jurisdiction limited to the extent of National Education Policy, Standards and Regulation; Curriculum, National Education Training Services; delivery of education services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- vii. Food and Agriculture, with Federal jurisdiction limited to the extent of National Agriculture Policy, Standards and Regulation and measures for ensuring food security; delivery of agriculture services, including agriculture extension services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- viii. Drinking Water Supply, with Federal jurisdiction limited to the extent of National Drinking Water Supply Policy, Standards and Regulation; supply sourced through desalination; and delivery of drinking water supply services in Federal territories
- ix. Irrigation, with Federal jurisdiction limited to the extent of National Irrigation Policy, Standards and Regulation; delivery of irrigation services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- x. Fisheries, with Federal jurisdiction limited to the extent of National Fisheries Policy, Standards and Regulation; fisheries in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- xi. Energy, with Federal jurisdiction limited to National Energy Policy, including Nuclear and Alternative Energy and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- xii. Environment and Climate Change, with Federal jurisdiction limited to National Policy on Climate Change & Environmental Management and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- xiii. Labour
- xiv. Civil Aviation
- xv. Railways
- xvi. Posts & Telegraph
- xvii. Arms, ammunition and explosives
- xviii. Customs
- xix. Census
- xx. National Highways
- xxi. Police, as related to the Federal Territories and establishment of National Police Service
- xxii. Standards of Weights and Measures
- xxiii. Federal Surveys including Geographical, Geological, Seismic Surveys and Federal Meteorological Office
- xxiv. International Treaties, Conventions, Agreements and International Arbitration

- xxv. Telecommunication, to the extent of National Policy, Standards and Regulation; development of telecommunication backbone infrastructure and services; delivery of telecommunication services in Federal Territories; interventions of strategic national importance; and auction and allocation of bandwidths and frequencies
- xxvi. Public Debt of the Federation
- xxvii. Major Ports
- xxviii. Port Quarantine
- xxix. International Trade
- xxx. Public Works, Land and Assets in relation to the Federal territories
- xxxi. Electricity, as related to the Federal Territories; establishment, operation and maintenance of the National Electricity Grid; and establishment, management and operations of electricity generating projects of over 100MW.
- xxxii. Intellectual Property Rights, including registration of patents, copyrights, trademarks and geographical indication.
- xxxiii. Taxes imposed in relation to any subjects enumerated in this List
- xxxiv. Capital Value Tax but not including tax on immovable property
- xxxv. Excise Duties
- xxxvi. Customs Duties
- xxxvii. Personal Income Taxes
- xxxviii. Taxes on Corporations
- xxxix. Insurance
 - xl. Fees on any subject enumerated in this List
 - xli. National Planning & Economic co-ordination
 - xl.ii. Regulatory Authorities established under any Federal Law
 - xl.iii. Central Bank of Yemen, including Monetary Policy
 - xl.iv. Currency, Coinage and Legal Tender
 - xl.v. Finance Commission of Yemen
 - xl.vi. Planning Commission of Yemen
 - xl.vii. National Economic Council of Yemen
 - xl.viii. National Investment Authority of Yemen
 - xl.ix. SNACC
 - I. COCA
 - li. Council of National Cohesion and inter-provincial coordination
 - lii. Constitutional Supreme Court
 - liii. General Supreme Court
 - liv. Supreme Commission for Election and Referendum of Yemen including elections of Federal and Provincial Parliaments, Local Councils and to offices of the President, Prime Minister, Governors, Chief Ministers and Mayors of Local Councils
 - lv. Federal Public Service Commission
 - lvi. Higher Education Commission
 - lvii. National Human Rights Commission
 - lviii. Controller General of Accounts
 - lix. Creation of New Provinces
 - lx. Inquiries, statistics and information collection as regards any subject enumerated in this List.
 - lxi. Environmental Tribunals in Federal territories
 - lxii. National Human Rights Commission
 - lxiii. Offences against any Federal Laws
 - lxiv. Criminal Law and Procedure
 - lxv. Civil Law and Procedure
 - lxvi. Administrative Courts, Tribunals, Commissions for any subject enumerated in this List
 - lxvii. Libraries, Museums and Archaeological Sites falling within Federal territories
 - lxviii. Matters ancillary or incidental to any subjects enumerated in this List
 - lxix. Stock Exchange, Commodities Exchange and Futures Exchange

- lxx. Mines, minerals and all forms of natural resources to the extent of National Policy, Standards and Regulation; licensing, investments and related matters for mines, minerals and all natural resources interventions of strategic national interest and importance as agreed between the Federal Government and the Provincial Governments;
- lxxi.

Concurrent Legislative List

- 1. Youth Affairs
 - 2. Women's Affairs
 - 3. Police
 - 4. Population
 - 5. Social protection
 - 6. Sports
 - 7. Establishment of Charter Cities
 - 8. Industries
 - 9. Media, ICT and Information Management
 - 10.
 - 11. Endowments, Trusts and Charitiess
 - 12.
33. **Justification:** Based on the guiding principles outlined in Section 1 of this option and also using other considerations (Box 7), we have developed these Legislative Lists, to clarify division of legislative powers and as a consequence, executive authority, since the latter flows from the former. As per this proposed division, we strive to achieve the following:
- a. Majority of basic services are transferred to the Provinces, but policy, standards-setting, oversight and some regulatory functions at Federal level to ensure a strong Federation and policy coherence. The implications of this will be that (a) substantial political power will be devolved to provinces; (b) financial resources and human resources will be transferred to the provinces for capital and recurrent financing; and (c) it will place a stress on the provincial capacities to plan, deliver and monitor services. The broad tax categories have been aligned with this proposed arrangement.
 - b. It retains subjects essential to developing national policies, standards, systems and protocols including in areas such as international conventions and agreements; civil, criminal laws and procedures; labour, environmental, weights and measures, quarantines, energy etc. The reason for this is that in these

specific areas, you cannot have different laws, policies and procedures in the country. Take criminal law for instance--murder should be punishable equally and corruption prosecuted similarly across the country.

BOX 7: INDICATIVE CRITERIA FOR DIVISION OF POWERS

Favouring higher levels	Favouring lower levels	Indeterminate
International responsibilities	Subsidiarity – allocating the task to the level closest to the delivery point	Recognising sovereignty
Tasks which are indivisible and achieve universality of coverage	Achieving responsiveness to clients	Alignment with revenue sources
Attainment of uniformity and catering for mobility	Capturing local knowledge and expertise	Capacity to deliver
Addressing equity and accessibility	Speedy implementation and service delivery	Efficiency
Catering for portability and spillovers	Monitoring of results	Effectiveness
Achieving national standards	Preserving uniqueness and diversity	Accountability
Acting as an initiator / stimulator		Linking policy to delivery

Source: Wiltshire 1977, ACIR 1981

34. The number and range of exclusive powers given under the Federal Legislative List is in keeping with similar lists in most Federations. The Concurrent List has been kept short, to address subsequent overlapping of functional responsibilities that has been experienced in several countries, including Pakistan⁴⁶, South Africa⁴⁷, Nigeria and Australia⁴⁸.
35. It must be borne in mind though, that while both Federal and Provincial Governments enjoy sovereignty in their jurisdictions, in a Federation and as per norms of Constitutional Federalism, in matters enumerated in the Concurrent List, legislation by the Federal Government assumes superiority over Provincial Legislation, as a form of Constitutional override. For example, if in the area of Youth Affairs both Federal and Provincial Governments enact legislation, the Federal legislation will prevail. It is possible to avoid any conflict, confusion and political embarrassment in such situations, through effective inter-governmental relations, which we identify in subsequent sections. Moreover, in a cooperative Federal system, the Federal

⁴⁶ Moriani, F, *The Eighteenth Amendment in the Constitution of Pakistan: Implications, Opportunities and Challenges*, UNDP 2011

⁴⁷ Steytler, N., *The Management of Concurrency*, University of the Western Cape, 2005

⁴⁸ *Distribution of Powers between Central Governments and Sub-national Governments*, United Nations Committee of Experts on Public Administration, 2011

Government and the constituent units share information and needs for legislation or administrative arrangements for subjects under the Concurrent List and often the constituent units may surrender their right to legislation in favour of the Federal Government, in the interest of coherence and consistency, although it is also true that such ‘surrender’ may be coerced by the Federal levels.

36. It is also important to note and be reminded that under this policy option, the Local Authorities are not Constitutional tiers of government, and are instead, creatures of the Provincial Government, following ‘*Dillon’s Rule*’⁴⁹. Hence, the Constitution will not specify functional responsibilities for Local Authorities, nor identify legislative powers of Local Councils, since these would have to be done by the Provincial Governments/*iqleems* themselves. However, as mentioned earlier, the Constitution will make it obligatory to establish—within a specified time period—Local Authorities with full administrative, fiscal and financial powers under elected Local Councils, leaving the exact nature, form and extent of decentralisation to each Province, as per their Provincial needs and contexts. This functional assignment would follow the same principles as are used for devolving power from the centre to the Provinces under this option and call for these to be protected under specific legislation. As an added improvisation, the Constitution may provide a guideline for intra-Provincial decentralisation, to assist Provinces to establish Local Authorities.

FORMAL JUSTICE STRUCTURE

37. **Proposal:** We propose the following structure of the formal justice system (Table 4):

TABLE 4: PROPOSED FORMAL JUSTICE SYSTEM		
Institution	Composition	Jurisdiction/Functions/Powers
Supreme Judicial Council	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - The Chief Justice of the General Supreme Court - Federal Minister for Law - The Attorney General - Four representatives of the practicing legal professionals nominated by professional lawyers’ associations, at least two of whom must be female - Four members of the National Assembly, nominated by the Speaker of the Assembly, at least two of which must be from the Opposition and at least one of whom must be female - Six members of the Federal Senate, nominated by the Speaker of the Senate, at least three of which must be from the Opposition and at least two of whom must be female - Three legal experts/academics, nominated by the President, at least one of whom must be female - Registrar of the Constitutional Supreme Court as Non-voting Member/Secretary 	<ul style="list-style-type: none"> - Advise the Prime Minister of the Federal Government and the President of the Federation on justice sector policies, standards and oversight, as well as capacity building of judicial officers - Advise the Prime Minister of the Federal Government on the appointment of judges of the Constitutional Court, the General Supreme Court, the High Courts, the Specialty Courts and the Traditional and Customary Law Courts, as well as the Prosecutor General. Appointments in the Courts of Magistrates to be made by the Provincial Governments directly, through a Provincial Judicial Service Commission for this purpose. - Exclusive jurisdiction over Constitutional matters, and issues connected with decisions on constitutional matters

⁴⁹ Named after American jurist John F. Dillon, whose judicial work established the principal—upheld in subsequent judgments of the US Supreme Court—of the pre-eminence of States or Provinces over local authorities.

Constitutional Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - Ten other judges of the Constitutional Supreme Court 	<ul style="list-style-type: none"> - Decide disputes between Federal and Provincial Governments concerning the Constitutional status, powers or functions of any of those organs of State - Decide on the constitutionality of any Bill - Decide on the constitutionality of any amendment to the Constitution - Determine whether any public official(s) has/have failed to fulfil Constitutional obligations
General Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the General Supreme Court - Ten other judges of the General Supreme Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters defined in Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of any Court other than the Constitutional Supreme Court
High Courts	<ul style="list-style-type: none"> - Headed by the Chief Justice of the High Court, to be established in every Province/<i>Iqleem</i> - Ten other judges of the High Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters that are not assigned to any other Court by Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of the Speciality, Customary or Magistrate's Courts unless otherwise stated in any Act of Parliament
Specialty Courts	<ul style="list-style-type: none"> - One Specialty Court each for Banking, Taxation, Revenue, Intellectual Property and Anti-Corruption at Federal and Provincial Government levels - Each Court comprising a bench of at least 5 Judges - 	<ul style="list-style-type: none"> - Jurisdiction over respective subject matters only as defined in Acts of Parliament
Traditional & Customary Law Courts	<ul style="list-style-type: none"> - Headed by the Head Judge of the Traditional & Customary Law Court - At least three other judges in each Traditional & Customary Law Court 	<ul style="list-style-type: none"> - Settlement of disputes under customary law and traditional practice
District Courts of Magistrates	<ul style="list-style-type: none"> - Headed by the Chief District Judge - Judicial Magistrates as may be appointed by the Provincial Government through the Provincial Judicial Service Commission, but no less than at least three in each District 	<ul style="list-style-type: none"> - Jurisdiction as defined in Acts of Parliament

38. **Justification:** In a Federal system, the judiciary is an even more important pillar of the State than it is under a Unitary form of government. The principal reason for this is that a cornerstone of any Federal structure is the existence of a strong, credible and independent institutional mechanism for dispute resolution between and among the Federating units. While it is not the only mechanism for achieving this objective as we detail later, the judiciary is integral to ensuring the supremacy of the Constitution and for ensuring resolution of disputes, clarification of Constitutional provisions and determination of transgressions by any constituent unit and thus protection of public interest, fundamental rights and liberties.

39. Our proposed justice sector structure is based on two considerations: one, the need to provide for a justice sector structure that *facilitates access to citizens*--hence, for example, our suggestion to establish courts at all tiers—Federal, Provincial and District—and to include Specialty and Customary Law courts so as to ensure that the High Courts and the General Supreme Court is not overwhelmed by caseload; and two, to *ensure the integrity and independence* of the judiciary, by making the judges' appointment not the decision of an individual or a closed group (such as bureaucrats of the Ministry of Law), but of a multi-stakeholder forum (Supreme Judicial Council) which includes opposition members of Assembly and Senate, as well as

representatives of the Provinces (through the Senate-nominated members); the proposal for appointing lower court officials through a Provincial Judicial Service Commission is also a step in this respect.

PUBLIC GRIEVANCE REDRESS MECHANISMS

40. **Proposal:** We recognise that the formal justice system—no matter how elaborate in its structure or how efficient in practice, needs to be supplemented by administrative justice and informal systems as part of the public grievance redress mechanisms. Further to our proposals as regards the formal justice systems in the immediately preceding section, and on informal systems and Alternative Dispute Resolution (please refer earlier discussions in this section), we also propose the following in relation to establishing relevant, effective mechanism for grievance redress:
- a. **Establishment of the Office of the Mohtasib** We propose that the Office of the *Mohtasib* be established both at Federal and Provincial levels, with geographic and functional jurisdiction over Federal and Provincial subjects as determined by the Federal Legislative List and the Concurrent Legislative List. For the latter, the Federal and Provincial Governments would need to reach an agreement on which of the two *Mohtasibs*—Federal or Provincial—would exercise exclusive jurisdiction, or whether joint jurisdiction would be exercised. The *Mohtasib* would:
 - i. Be a Constitutional institution, with the tenure of a *Mohtasib* being 5 years.
 - ii. Be appointed by the President of the Federation on the advice of the Prime Minister of the Federal Government in case of the Federal *Mohtasib*, and by the Governor of the Province, on the advice of the Chief Minister in case of the Provincial *Mohtasib*.
 - iii. Diagnose, investigate, redress and rectify any injustice done to a person through mal-administration⁵⁰ by any public agency.
 - iv. Take cognizance of mal-administration on the receipt of a complaint by a citizen; on a reference by the President, the Prime Minister or the Parliament; on a motion of the Constitutional or General Supreme Court or the High Court; or *suo moto*.

⁵⁰ There is variation in how countries define *mal-administration*, but we use it here to include any decision, process, recommendation, act of omission or commission which is contrary to law; perverse, arbitrary and discriminatory; violates basic rights; involves inefficiency, neglect, corruption, delay and nepotism; or unfair and constitutes abuse of power.

- v. Carry out research on systemic issues leading to mal-administration and advise the public agencies on how to improve their internal processes with a view to making them more citizen-friendly, transparent and publicly accountable.
 - vi. Enjoy all legal powers equivalent to that of a judge of the General Supreme Court.
 - vii. Be governed by structures, processes, procedures and systems identified in an Act of Parliament.
 - viii. Publish an Annual Report and present its findings to the Parliament.
 - ix. Initially, a general purpose *Mohtasib* would be established, and in response to emerging needs, specialty *Mohtasibs* for banking, insurance, tax, telecommunication, media, social sectors and Child *Mohtasibs* could be established. Provincial Governments may also choose to appoint District *Mohtasibs* as a formal, district-specific public grievance redress mechanism.
 - x. The *Mohtasib*'s jurisdiction will not extend to matters that are *sub judice* or relate to foreign affairs.
 - xi. The services of the *Mohtasib* will be free for the public and use mediation and arbitration to the extent possible to expedite access to justice.
 - xii. Provided further that while the jurisdictions of the *Mohtasib*, Courts, COCA and SNACC are distinct from each other, coordinated efforts under a National Integrity System are recommended.
- b. **Office of the Office of the Information Commissioner** In order to protect citizen's fundamental right for access to information and as a means to ensuring transparency and progressing towards Open Government; it is proposed to establish the Office of the Information Commissioner at both the Federal and the Provincial Government levels. The specific functions, powers and processes would be as per an Act of Parliament by the appropriate legislature. As with the Office of the *Mohtasib*, the Federal and Provincial Governments would need to reach an agreement on which of the two *Mohtasibs*—Federal or Provincial—would exercise jurisdiction over subjects enumerated in the Concurrent Legislative List, or whether joint jurisdiction would be exercised. The Information Commissioner would receive, review and investigate complaints from citizens related to denial, delays or prevention from access to public information. The procedures, processes and structures of the Information Commissioner would be governed by the provisions of an Act of Parliament. In several Federal States, the offices of the *Mohtasib* and the Information Commissioner are combined and we propose the same for Yemen.

- c. The Information Commissioner will help public agencies under his/her jurisdiction establish Public Information Officers in every agency to facilitate citizen's access to information and will also help develop appropriate rules and regulations.
- d. The Access to Information legislation would be developed from the perspective of enhancing and facilitating access, focusing on a mix of voluntary and obligatory disclosure; and minimizing exclusions of categories of information, employing the public interest test⁵¹.

Justification: Administrative justice forms an important element of the Public grievance redress mechanisms. The institution of the *Mohtasib* or Ombudsman is a key institution for ensuring administrative accountability (Box 8) and has proved to be a very effective of addressing gaps in administrative efficiency, reduction in administrative delays and in providing free and speedy redress of public grievances. Ombudsmen are particularly useful institutions in Federations, given that functions, powers and resources are devolved to several order of government, which necessitates oversight at different tiers of service delivery.

BOX 8: THE INSTITUTION OF THE OMBUDSMAN

The Ombudsman is an important institution whose principal function is to protect people against the maladministration of government agencies. Ombudsmen handle complaints from individuals and organizations about issues such as discrimination, injustice, or any grievance resulting from the negligence, inefficiency, misuse or abuse of power and authority by government agencies or their refusal or failure to follow rules, regulations and procedures. Ombudsmen strive to resolve public complaints against such maladministration in an efficient and effective manner and promote transparency, accountability, and good governance. They are therefore important institutions for the protection and promotion of human rights and for establishing and sustaining a thriving, democratic and accountable State. From the perspective of the public, it is an important institution since it enables easy access to administrative justice services and for public accountability on everyday interaction with government agencies, as opposed to the judiciary, which while also enforcing public accountability and provision of justice, do so through very formal and often rigid mechanisms.

Types of Ombudsmen

Legislative/Classical These are Ombudsman established under a statute, with broad mandates to protect citizens against maladministration at the national, state or local levels of government. The Wafaqi Mohtasib of Pakistan is an example of a classical model Ombudsman.

Organisational/Private Sector Many private companies, universities and NGOs also have an ombudsman to serve internal employees, and managers and/or other constituencies and reporting to the CEO or board of directors. For e.g. the Ombudsman of the UN.

Industry Specific or Specialty Ombudsmen can also be specific to an industry, redressing grievances relating to a particular industry. The Estate Agents Ombudsman is one such example. Similarly, speciality Ombudsmen like a LG Ombudsman, deal with particular sectors only.

Functions and Processes of an Ombudsman

Ombudsmen receive complaints from citizens against government agencies. If there appears to have been a violation, the complaint must be investigated. The investigation must be conducted independently of the government and by officers who are completely impartial. The outcome of the investigation is then brought to the attention of the agency and a response demanded. If there is no response or the response is not satisfactory, then the Ombudsman has the power to bring public pressure to bear upon the agency.

As mentioned earlier, all Ombudsmen around the world have a common base in terms of their characteristics and principles, which are:

- a. Ombudsmen provide **informal** means of grievance redress and dispute resolution.
- b. All Ombudsmen, whether established through a statute or organizational decision, are **independent** institutions.
- c. Ombudsmen provide **speedy justice**.
- d. **Impartiality, objectivity and fairness** are the hallmarks of an Ombudsman service.
- e. Proceedings carried out by the Ombudsman are **confidential**.
- f. Ombudsman services are **easily accessible** by the public, with minimal procedures and without the need for lawyers

⁵¹ When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

ACCOUNTABILITY

41. **Proposal:** To round off our proposals regarding the justice and accountability sector, we propose the following as measures of strengthening public accountability:

a. **Focus on Legislative Accountability:** We propose that Parliament establish mechanism for legislative oversight, including:

i. Establishment of a Federal Public Accounts Committee (FPAC), as a Standing Committee of Parliament, whose mandate would be to review and report on (a) the Public Accounts of Yemen; (b) *all* reports of the Auditor General of Yemen; and (c) any other matter referred to it by the Parliament from time to time. The FPAC would be concerned with efficiency of program delivery as well as the adherence to government policies, directives and standards and will hold government to account for effective public administration and due regard for public funds. The FPAC would be headed by a member of the National Assembly from amongst the Opposition benches, nominated or elected by all the Opposition Members. It would have 10 other members, 5 from the National Assembly, 3 from the Senate and two from the Council of Elders/Traditional Leaders; at least 3 of the overall membership would be female. The deliberations, reports and recommendations of the FPAC would be public documents and all efforts would be made to ensure widespread public disclosure through print and electronic media and official FPAC and government websites.

ii. A Provincial Public Accounts Committee (FPAC) at the Provincial level along the same lines as the FPAC.

iii. A Cabinet Committee on Public Accountability headed by the Senior Minister of the Cabinet and comprising five other Ministers (Finance, Law, Planning, Interior and Inter-Governmental Relations

b. Make the Supreme National Authority for Combating Corruption (SNACC) independent and extend its operations at District level: Independence of SNACC

and firewalling from administrative and political influence is critical to its effectiveness and credibility. There are two ways in which the independence of SNACC can be approached: one, it must be converted into a Constitutional body, with the Head of SNACC appointed by the President of the Federation on the advice of the Prime Minister, who in turn must consult the Leader of the Opposition in both the Lower and Upper Houses. We propose further that the term of office of the Head of SNACC should be for 5 years and he/she should be completely empowered in terms of executive authority for recruitment, budgeting and internal monitoring. Moreover, till such time as the Provinces are able or willing to establish their own institutional mechanisms for anti-corruption, the reach and operations of SNACC must be grounded at the District level.

- c. Establish Anti-Corruption Courts: We have already proposed the establishment of these specialty courts in the section on formal justice sector.
- d. From Accounting to Accountability: We propose a separation in accounting and auditing functions, with the establishment of a Controller General of Accounts at the Federal and Provincial levels, allowing the Central Organisation for Control and Auditing, to perform auditing functions alone.
- e. Whistleblower Act: In order to protect and encourage sharing of information about corruption and corrupt practices, we propose that the Federal and Provincial Parliaments enact Whistleblower legislation.
- f. Ambient Accountability: We propose to introduce what we term as the 'Open Kitchen' approach to accountability, building on the concept of ambient accountability. Just as in a real-world open kitchen where the cooks prepare food using ingredients that are visible and performing specific tasks under the management of a head chef, coordinating, communicating and reporting to the chef in full view of the diners for whom the food is being prepared, our Open Kitchen approach has three elements: (i) Transparency as regards to who it is that is working to deliver the service; (ii) Clarity in terms of roles and functions; and (iii) Making citizens aware which mix of tools and processes are being used to deliver the service or manage the process. We propose that citizens' access to tools and mechanisms for public accountability needs to be facilitated and that ambient accountability tools, such as use of mobile phones for filing, tracking complaints over a toll-free Call Centre, with the number prominently displayed in public places where services are being delivered; citizen's charters in Arabic, published and broadcast over electronic media; use of postal services for filing and tracking complaints as a free service for citizens; placement of signs and posters with contact numbers of relevant persons at every public agency

premises and other modes of accountability ‘here and now’ be instituted, led by SNACC in conjunction with Federal, Provincial and District offices and in consultation with the Council of Elders/Traditional Leaders, as well as other social accountability forums proposed earlier.

- g. Social Accountability: In addition to the several forms of social accountability proposed in earlier sections (e.g. Citizen’s Budgeting) as well as above, we add the proposal that amendments be made in the structure and processes of the Public Procurement Regulatory Authority, to include a Citizen’s Witness in all procurement processes. The Citizen’s Witness would be nominated by local NGOs and/or traditional leaders such as Sheikhs and religious leaders, who would act as an observer and report on the transparency and independence of the procurement process. Furthermore, we propose that the Higher Authority for Tender Control (HATC) be given an independent status, removing it from the administrative control of the executive and placing it under an independent Board of Directors to be appointed as provided under an Act of Parliament.

42. **Justification:** The stress on securing independence of the accountability institutions, and the focus on creating interfacing between citizens, communities and public institutions and processes, owes itself to the drive for restoring and sustaining integrity of the public accountability institutions. Moreover, we appreciate the fact that traditional, bureaucracy-led accountability processes—important as they are—need to be buttressed by innovations such as social accountability. The mobilisation of youth during the Arab Spring not only in the Arab world in general, but in Yemen as well, point to citizens’ power waiting to be unleashed for public accountability. Our proposals for ambient accountability—defined as *all efforts that seek to shape, use and engage systematically with the built environment and public places and the ways people experience and interact in them, in order to further transparency, accountability and integrity of public authorities and services*⁵²—are low-cost innovative ways of providing citizens more opportunities for holding public officials to account, in an

BOX 9: DEFINING WHISTLEBLOWING

Whistleblowing a. Bringing an activity to a sharp conclusion as if by the blast of a whistle (OED) b. Raising concerns about misconduct within an organisation or within an independent structure associated with it (Nolan Committee) c. Giving information (usually to the authorities) about illegal or underhand practices (Chambers) d. Exposing to the press a malpractice or cover-up in a business or government office (US, Brewers) e. Providing a safe alternative to silence (Public Concern at Work) f. (origins) Police constable summoning public help to apprehend a criminal; signal to stop work in the industrial age; referee stopping play after a foul in football.

⁵² Zinbauer, D., *Ambient Accountability*, Transparency International, 2012

instantaneous, actionable, dis-intermediated manner. Moreover, legislation on Whistle-blower Protection (Box 9) would encourage reporting on corruption without fear of retribution, while the separation of Accounting functions from the Audit function would remove the inherent conflict of interest which exists at present.

NATURAL RESOURCE MANAGEMENT

43. **Proposal:** In order to arrive at a more efficient, equitable and transparent process of managing natural resources, we propose the following:

- a. **Natural resources to be jointly owned** by the Federal and Provincial Governments. This means that decision on grant of concessions, licensing and related contractual decisions as related to extractive industry to be made by the Federal Government and the Provincial Government jointly. This would be done through a National Extractive Industry Committee (Appendix 13), established under an Act of Parliament, which would work with the Federal Ministry of Natural Resources, the Public Procurement Regulatory Authority and civil society to develop standards, ensure transparency and oversee the enforcement of contractual obligations. Recommendations of this Committee would be tabled before the Federal Parliament as input into the decisions to be taken on any issue related to the extractive industry.
- b. **Holistic Natural Resource Management** by establishing a Ministry of Natural Resource Management at Federal level, which would be responsible for managing the whole of the natural resource management sector—including natural gas; fish; rock salt, marble; small deposits of coal, gold, lead, nickel, and copper; fertile soil in west--not just oil. This new Ministry if proposed to be formed by merging the existing Ministry of Water Resources and the Ministry of Mineral Resources. The Yemen General Corporation for Oil & Gas/Mineral Resources (YGCOM), the Yemen Oil Refinery Company and the Yemen LNG Company would continue to exist, but the Petroleum Exploration and Production Authority (PEPA) and the General Department of Crude Oil Marketing (GDCOM) would be merged in the YGCOM.
- c. For revenue sharing, a **50-50-50 Plan is proposed**, enshrined in the Constitution, under which revenues from extractive industries, including revenues from exports, are proposed to be shared as follows:

- **Citizen's Share: 50%** to be distributed to each citizen of Yemen, as a cash transfer (*People's Payment*) at the rate of US\$0.50 (50 cents) per capita per day, net of an income tax applied at a flat rate and deducted at source. Distribution to be managed by a Special Purpose Vehicle established for this purpose. Payments would be capped at 3 members per family (Box 10).

BOX 10: FAQs FOR THE DIRECT CASH TRANSFER MECHANISM FOR YEMEN

What is a Direct Cash-Transfer?

It is a payment made to citizens directly by the Government in the form of cash. The recipients would be free to choose how and on what they spend this cash.

Who will be eligible for the Cash Transfer?

Every citizen of Yemen is eligible, subject to a maximum of three persons per household.

How much money would each citizen receive?

The payment will be made on the basis of the equivalent of US\$ 0.50 (50 cents) per day per person or US\$15 per month per person. Every payment will be accompanied by an 'account summary' indicating the payments made every month, any arrears and the date on which the next payment would be made.

What would be the frequency of payments?

Payments would be made on a monthly basis.

What will be the mode of payment?

There are several options: **m-Money** for citizens with mobile phones—once they receive an SMS that the payment is available for collection, they can 'encash' at any participating retailer—these retailers could be any shopkeeper such as those already part of the pre-paid card vendor network, or bank, who will receive a small commission to be paid by the Government; through **ATM cards** to be used like regular ATM cards for withdrawal at any ATM machine; in areas where there are no ATM machines, or where retailers are not available or willing to participate, the **Post Office** would be used, with either the postman delivering the cash like a money order (suited for women whose mobility is limited) or at the post office itself. A combination of all these modes would likely be used.

Will there be a tax on the payments?

Yes, a tax applied at a flat rate (to be determined), deducted at source.

Who will be responsible for the 'People's Payment'?

A not-for-company established under an Act of Parliament, which will have an independent Board of Directors headed by a CEO recruited competitively. The Board will have representation from Government, civil society and

Who verifies the payments?

There will be five levels of verifications: the Central Organisation for Control of Auditing (COA), who will carry out a bi-annual audit; an independent firm of Chartered Accountants hired by the Special Purpose Vehicle, who will conduct a risk-based audit every quarter; the Council of Elders/Traditional Leaders, who will provide oversight through field-visits, beneficiary interviews; the Citizen's Advisory Committees to be formed in every District (these are referred to in paragraph 4.17); and by the Special Purpose Vehicle, who will institute its own review process, including acting upon complaints and feedback given by the public through websites, in writing or in person.

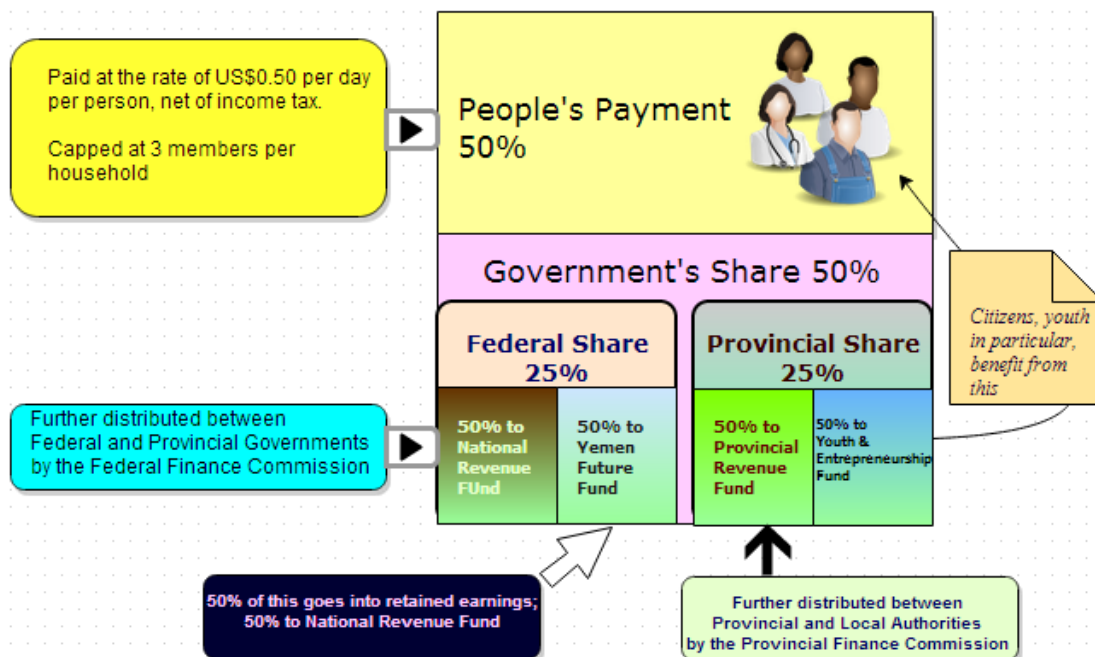
Who will receive and redress complaints against payments?

Complaints regarding the *administration* of payments (e.g. delays, incomplete or irregular payments, denial of access to information) would be made to the Federal or Provincial *Mohtasibs*; complaints regarding *corruption* to be made to SNACC; disputes between community members and complaints against any wrongdoing by community members to be made to the Council of Elders/Traditional Leaders or the District Mediation Committees.

- ***Federal Government and Province Share: 50% of the balance (net of Citizen's share)***, to be distributed as follows:
 - Of the Federal share, 50% goes into the Yemen National Revenue Fund (Government's consolidated fund) for further redistribution between Federal and Provincial Governments under the National Finance Commission (described in next section). The remaining 50% of the Federal Government's share goes into Yemen Future Fund (*Al Yemen Sanduq Al-Mustaqbil*). The Fund is proposed to be established as a not-for-profit company which serves as an investment fund manager. Out of the profits generated from the *Al-Yemen Sanduq Al-Mustaqbil*, 50% is reinvested into the fund (as a form of retained earnings), which can be drawn down for specified purposes only—changeable only through a referendum and requiring a double majority vote⁵³ (majority of Provinces and majority of voters within the Province); and 50% is to be transferred into the Yemen Revenue Fund.
 - Of the Provincial share, 50% goes into the Provincial Revenue Fund (consolidated fund) for further redistribution between Provincial and District Governments. The remaining 50% goes into a Youth Entrepreneurship and Innovation Fund, which serves as a Government-led Venture Capital Fund to promote entrepreneurship in the Provinces and which may be established and managed in partnership with the Central Bank and private sector (Figure 1).

⁵³ This would also set up a direct democracy mechanism in Yemen that runs parallel to the indirect democracy in the form of a representative Parliament at Federal and Provincial levels and elected Local Councils.

FIGURE 1: THE 50-50-50 REVENUE SHARING PLAN



- d. A one-time **Royalty Payment** will be made to Provinces from where majority of oil is extracted, as a means of compensating for lost revenues over the past years. This payment will be a token payment, made as a gesture of goodwill by the Federal

BOX 11: CALCULATING OIL ROYALTY IN CANADA

For wells on Crown land, the Royalty Share for a well for a month is that volume of oil that is the sum of:

- (i) a volume of Old Oil, calculated as: $V \times RO \times (1 - P_N - P_T)$, and
- (ii) a volume of New Oil, calculated as: $V \times RN \times P_N$
- (iii) a volume of Third Tier Oil, calculated as: $V \times RE \times P_T$
- (iv) a volume of Heavy Oil, calculated as: $V \times RH$

where,

- V = the total volume of oil produced from the well in the month
- RO = the Royalty Rate for Old Oil
- RN = the Royalty Rate for New Oil
- RE = the Royalty Rate for Third Tier Oil
- RH = the Royalty Rate for Heavy Oil
- P_N = the ratio of New Oil production from the well to the total volume of oil produced from the well
- P_T = the ratio of Third Tier Oil production from the well to the total volume of oil produced from the well

Source: Oil and Gas Royalty Handbook, Ministry of Finance, British Columbia, 2011

Government, based on a formula to be devised by the National Finance Commission, which will analyse the international experience (Box 11) in this respect, including use of well-head pricing systems and also

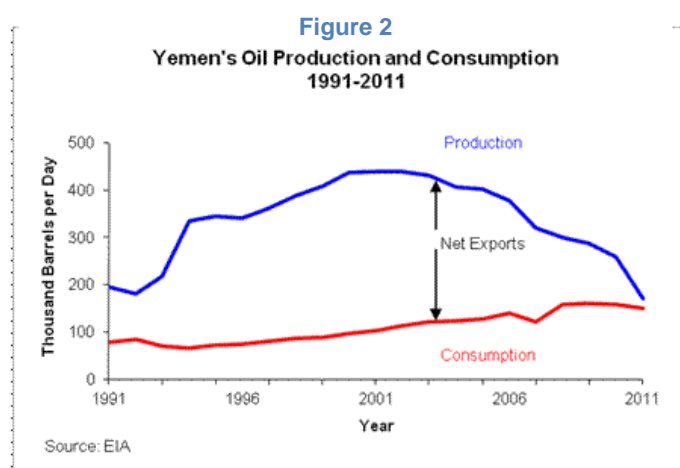
negotiate a settlement between the Federal and relevant Provincial Government(s) on the period for which the Royalties would be paid and on the size, instalment and mode of each payment. This payment would be made from the current stock of profits with the Yemen Petroleum Company and the Ministry of Oil and Minerals. Similarly, a one-time Royalty Payment would also be made to Provinces where oil or gas is discovered and extracted from after the new Constitution comes into being.

- e. As a measure of fairness, any private land which needs to be acquired for extraction or exploration of natural resources would be acquired through a Land Acquisition Act. Payment to the landowner would be made based on an **individual royalty**, calculated to arrive at a fair market value (Box 11 shows an indicative process; there are several other ways to calculate the fair market value).

BOX 11: CALCULATION OF INDIVIDUAL ROYALTY ON LAND	
Size of Property Amount of an individual's property pooled into a particular Production Unit.	<input type="text"/> acres
Size of entire Production Unit This is the physical size of the entire Production Unit as established by the Operator (i.e. the oil or gas company).	<input type="text"/> acres
Percentage of mineral ownership within your property This could be 100%, 50%, 33%, 25% or some other percentage. Enter as a whole number.	<input type="text"/> %
Royalty percentage from your Oil Lease % of royalty agreed to between landowner and the Lessee, as stated in the lease that the landowner signed.	<input type="text"/> %
Decimal Interest	<input type="text"/>
Price Per Barrel of Oil Based on prevalent market price	<input type="text"/>
Production Volume Estimated barrels of oil produced monthly from this Unit.	<input type="text"/> Barrels/ month
Total Individual Royalty	
Source: www.mineralweb.com	

- f. Imposition of a **Business4Community (B4C) Tax** at the rate of 3% on net earnings of companies—whether foreign or local—working in the extractive industries. This tax would be collected by the Province where the extractive industry is based and would be eligible for use only in the districts where the extraction or exploration is being carried out; these funds would only be eligible for use in the education and health sectors, with the companies paying this tax, sitting on a District Steering Committee that would oversee the use of the tax proceeds. Furthermore, through specific provisions in the National Tax law, voluntary financial contributions by companies in these districts under their CSR programs, made as top-ups to the B4C Tax would be tax deductible; this would serve as an incentive for the companies to provide additional funding for local projects that benefit local communities.
- g. As a measure of transparency, the National Extractive Industry Committee would establish and maintain a **Natural Resources Portal** on which all data and information related to natural resource contracts, licenses and updated information on production, revenues, exports, taxes collected and status of distribution of resources, royalties etc. would be updated. There would also be an Online Complaint system whereby any citizen would be able to file a complaint or report any suspected corruption and these complaints would be redirected in real time to SNACC.

44. **Justification:** Natural resource management—or more precisely, oil revenues—is a highly contentious issue in Yemen and the bedrock of political negotiation, patronage and pernicious cleavages in society. Although Yemen is a minor oil producer and exporter globally—its world market share is about 0.4%—oil contributes three quarters



of total revenues, more than 80% of exports and employs more than 4000 people. Despite plummeting production (Figure 2) and depleting oil reserves, expected to dry out by 2017, although recent geological surveys by the US Energy Information Administration show some potential untapped oil

resources⁵⁴, the oil sector, and revenues from it, have been put forth as a showcase for both the inequity in wealth distribution as well as the extent of centralisation.

45. Because of the current, lopsided reliance on the oil sector, its role in shaping political debate over the future structure of government has assumed a level of significance disproportionate to its effect and seemingly oblivious to its distortionary impact on the debate. In view of this background, Yemen is afflicted both by the 'resource curse' and as an unfortunate addendum of this, by the 'Dutch Disease'⁵⁵. There is ample evidence globally on how economies with natural resources end up being held hostage to its rents, with elite capture so complete and corruption and absence of rule of law so endemic as to render nations vulnerable to long term poverty, disease and conflict (Box 12). Our proposals for natural resource management and revenue sharing from oil are aimed at reducing the likelihood of the kind of damaging effects that are evident in resource-cursed countries globally, and in Yemen itself.

⁵⁴ *Hidden Riches*, Zawya, 18 November 2012

⁵⁵ This refers to the apparent relationship between the increase in exploitation of natural resources and a decline in the manufacturing sector. Increase in revenues from natural resources (or inflows of foreign aid) will make a given nation's currency stronger compared to that of other nations, making the manufacturing sector less competitive. The term was coined in 1977 by *The Economist* to describe the decline of the manufacturing sector in the Netherlands after the discovery of a large natural gas field in 1959.

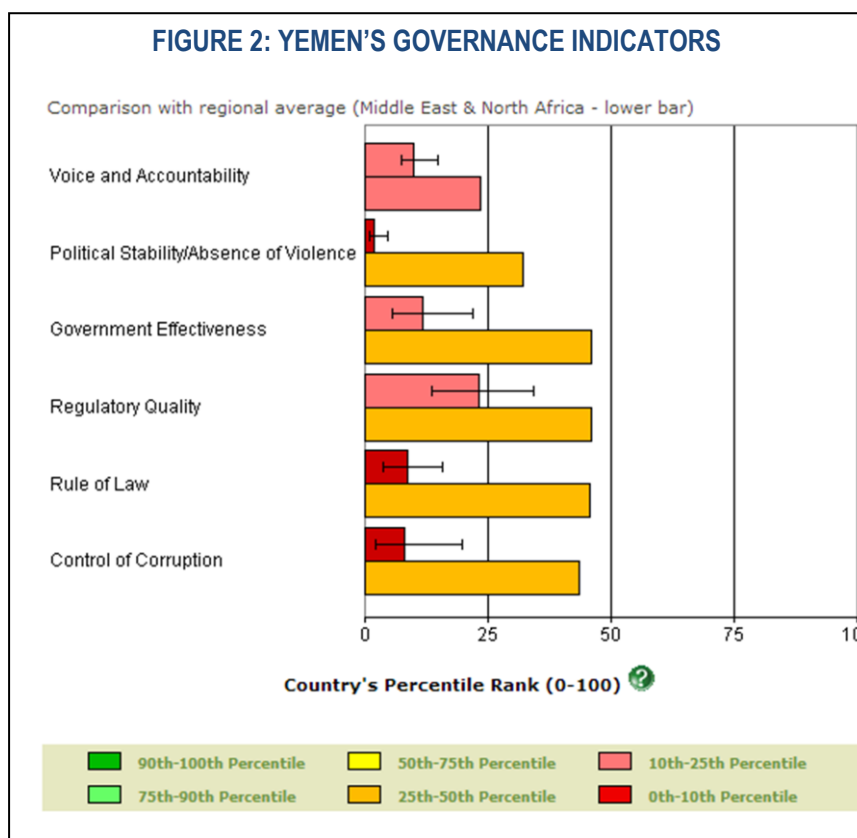
BOX 12: THE DELETERIOUS EFFECTS OF THE RESOURCE CURSE

There is emphatic evidence of the deleterious impact of revenue from natural resources on the economy, politics and society. The range of its manifestations are summarised below:

Effect	Evidence
Conflict	Cross-country studies demonstrate that natural resource dependence is a better predictor of the outbreak of civil war than a number of other variables, including polarization and social fractionalization. Countries where primary commodity exports make up 33% of GDP, the likelihood of conflict increases to 22%, compared to 1% for a country with no such exports.
Authoritarianism	All of the 23 countries most dependent on oil and gas were under authoritarian rule at some point between 1974 and 2008.
Corruption	There is a robust correlation between corruption and the abundance or intensity of natural resource exploitation, with a 15% increase in the share of natural capital in national wealth correlated with a 20 % drop in the corruption perceptions index. Other researchers' find increases of up to 40% in corruption in vote buying, education, and customs in São Tomé and Príncipe following the announcement of an oil discovery.
Macroeconomic instability	<ul style="list-style-type: none"> ▪ Dependence on natural resource has negative implications for macroeconomic performance, especially by increasing vulnerability to external price shocks and reinforcing a narrow export base. ▪ The experience of the Netherlands in the 1970s after the discovery of oil, demonstrates how an oil-sector boom draws out capital and labour out of all other tradable sectors. ▪ Another example is that of Venezuela, where the boom in the oil industry—particularly between 2004 to 2008—corresponded with a steady decline in economic growth. ▪ A study on Iran's oil-based economy from 1960-1997 showed the excessive reliance on oil revenue and exports led to the complete neglect of the task of capital formation, and instead pursued policies of attending to (short-term) consumption expenditures.
Poverty	From 1960 to 1990, the economies of <i>resource-poor</i> countries grew two to three times faster than resource-rich countries
Impact on social services	<ul style="list-style-type: none"> ▪ Rule of Law shows a marked deterioration in resource-dependent countries, which in turn has a negative impact on economic growth. ▪ Research also shows that public service delivery also suffers, with a strong negative relationship between natural resource dependence and secondary-school enrolment ▪ High degree of resource dependence is associated with worse government effectiveness, as well as with reduced levels of competition across the economy.
Governance and competition	<ul style="list-style-type: none"> ▪ A 1% increase in the average worldwide share of fuel exports in total exports leads to a 0.13% decrease in government effectiveness in the short run, and to a 0.20% decline in the long run. When considering competition in the local market, an increase of 1% in the share of fuel exports in total exports is associated with a decrease of 0.69% in the competition indicator in the short run and of 0.93% in the long run. ▪ Regulatory capture by the elite is evident in resource-dependent countries, leading to their control over public policy and distribution of wealth.

Source: Moss, T. and Young, L., *Saving Ghana from Its Oil*, Centre for Global Development, 2009; Rosa, D. and Iooty, M., *Are Natural Resources Cursed?*, World Bank, 2012; Rodriguez, P., *Direct Distribution of Oil Revenues in Venezuela*, Centre for Global Development 2012; Badiei, S. and Bina, C., *Oil and the Rentier State: Iran's Capital Formation 1960-1997*, Middle East Economic Association, 2002

46. Yemen's own experience corresponds with this global evidence. All governance indicators have shown a declining trend and fall substantially short of the regional averages (Figure 2) from 2000 to 2010. Displaying all the characteristics of a rentier State—political dysfunction, low tax-to-GDP ratio, low capital formation, high and rising levels of unemployment



- (35%) and manifestations of the Dutch Disease in the form of lack of attention to other sectors, agriculture in particular. Importantly, this oil-dependence and the desire to control natural resources involves not just the formal State institutions (the army, central government, oil companies, civil servants etc.) but also the informal actors (tribal leaders, political party members), who are all part of an elaborate and complex petrol-politics-patronage triumvirate. In addition, it has become a rally call for politicians from the South and tends to punctuate demands made for separation by some.
47. Our proposals stem from the underlying principle of enabling citizens to benefit from oil and other natural resources, while at the same time shifting focus of public policy away from the constrictive narrative of the oil-economy. The former we propose to achieve through the *People's Payment*, the latter through the use of Funds and the effort to use the proceeds from natural resources as a source of stabilisation and promotion of entrepreneurship. We recognise that there are several details to be fleshed out once the proposal is approved but it is the principle we are proposing here, not the mechanics. We are also aware that the implementation of the proposed system will be faced with multiple challenges, beyond the initial buy-in and circumventing the vested

interests of the elite⁵⁶. However, that is precisely the kind of political negotiation that the National Dialogue is meant for.

48. The idea of direct cash transfers and use of Funds—rather than traditional budgeting processes—might appear, on the face of it, to be too different from the conception of how the revenues from natural resources should be managed. Clearly, none of the political parties or other stakeholders has thought along these lines. However, the premise is simple enough: if the purpose of more equitable revenue sharing arrangements is to empower citizens and if the people really are intended to be the owners, then we need to identify mechanisms that are less intermediated, more transparent and which transform the usual principal-agent relationship between the State and the Citizen into a partnership, with clear, simple rules. The usual model of revenues flowing from the benevolent or progressive government to citizens in the form of better services has very rarely worked in any resource-rich countries and there is no evidence whatsoever of it having worked in Yemen.
49. The arrangements we propose—direct cash transfers—are no longer far-fetched in terms of implementation and are increasingly become *de rigueur* in developing countries. As of 2009, more than 170 million people in 60 countries are using direct distribution or direct cash-transfer mechanisms⁵⁷; they by-pass the limitations of low coverage of level of national identification such ID cards and a cash-based economy where access to banking services and existence of bank accounts simply isn't available for substantial proportions of the population; the current penetration of mobile services is impressive—at over 11 million subscribers estimated in 2011 or nearly half of the population⁵⁸—means the potential for mobile-phone based services is huge; use of mobile phone-based services and solutions can also yield positive externalities including initiating health services (public health messages sent over SMS) or agriculture extension services (such as sharing information on use of inputs, weather and prices over SMS) to empower people.
50. Moreover, the payments proposed, at US\$0.50 per day per capita work out to US\$15 per month and US\$180 per annum are just under 15% of the current per capita income (US\$ 1,351 in nominal terms in 2011) and hence are large enough to be a significant social protection mechanism—especially when aggregated at the household level—for

⁵⁶ Within the region, the UAE presents an interesting regional case of how oil was used well and now the country is developing through primarily non oil means. In addition, Libya also tried to implement a scheme which bore some similarities with this proposal. For more details, please refer to <http://www.tripolipost.com/articledetail.asp?c=5&i=2558> and

⁵⁷ Moss, T., *Oil to Cash: Fighting the Resource Curse through Cash Transfers*, Centre for Global Development, 2011

⁵⁸ International Telecommunications Union, 2012

a country with 45% of its population living below the poverty line, but not so large as to act as a disincentive for people to work; furthermore, the proposed *People's Payments* relocates political power away from the elite and to the people themselves, since it is not simply the actual payments that are the direct benefit under this proposed mechanism, but the fact that there is a system of greater transparency and accountability embedded in the process, which creates the basis for more Open Government, as well as sowing the seeds for direct democracy that sits astride the more traditional indirect democratic system. Also, by shifting the focus away from current spending—and thus of reducing elite capture over financial resources through the means of budgets and contracts—and by providing for stabilization through the proposed *Al-Yemen Al-Sanduq Al-Mustaqbil* or Yemen Future Fund, a foundation for more medium term planning and for enhancing fiscal effort by all orders of government, will be created. Since most of the natural resource revenues will not be available as a windfall to fuel populist policies or plans, it will force the governments to improve the coverage, basis and administration of revenue collection through taxation, in order to finance investment. In doing so, it will strengthen the fiscal contract between the State and the Citizen. Furthermore, by taxing every citizen who receives the *People's Payment*, it will be instituting a tax culture for every Yemeni; the at-source deductions would also mean a cleaner, administratively efficient tax collection mechanism that will also lead to better cash-flow management by ensuring predictability of flows of a certain level and since it's an open system of calculation of potential tax receipts, it will enhance transparency and accountability of the Tax Authority.

51. There are other benefits too for the people and for the areas where the natural resource extractions is located. The B4C Tax and the tax breaks on corporate responsibility based voluntary top-ups could create a valuable and long lasting business-community engagement through social sector investments that benefit local communities directly. Moreover, the idea of involving the Council of Elder/Traditional Leaders and the District Mediation Committee in grievance redress related to the *People's Payment* system, aims to widen the social accountability process.

FISCAL AND FINANCIAL AUTONOMY

52. **Proposal:** The principal of finance following function is an important one, since political devolution and decentralisation of functions and powers without adequate fiscal autonomy and appropriate financial powers create the basis for dysfunction. Based on the division of power as articulated in the proposed Federal and Concurrent Legislative Lists—and as a consequence, the residual power to be exercised by the Provincial Governments—we propose the following:

- a. **Create an enabling fiscal empowerment** by aligning subjects for which the two orders of Government are responsible, with the power to raise taxes and. In this respect, we propose the following:

TABLE 3: INDICATIVE LIST OF TAX AND NON-TAX REVENUE GENERATION POWERS			
Government	Taxes	Non-Tax Revenue Sources	
Federal	<ul style="list-style-type: none"> - Personal Income Tax - Corporate Tax - Capital Gains Tax - General Sales Tax - Highways Tax - Zakat in Federal Areas - Taxes on Telecommunication - Taxes on Electricity - Taxes on Aviation - Taxes on Tobacco - Wealth Tax 	<ul style="list-style-type: none"> - Customs Duties - Federal Excise Duties - Import Duty - Export Duty - Fees on licensing, registration for subjects under the Federal Legislative List 	
Province	<ul style="list-style-type: none"> - Tax on Services - Agriculture Tax - Immovable Property Tax - Tax on Transfer of Property - Business4Community Tax - Zakat in Provinces - Municipal Taxes - Water Tax - Urban Development Tax - Motor Vehicle Registration Tax - Hotel Tax - Entertainment Tax - Roads Tax - Business Registration Tax - Provincial Road Tax 	<ul style="list-style-type: none"> - Land Revenue - Stamp Duties - Education Cess, Fee - Health Cess, Fee - Natural Resource Licensing Fee - Property Transfer Fee 	<ul style="list-style-type: none"> • Shops and kiosk rates • Abattoir fees • Marriage, birth, and death registration fees • Market/motor park fees • Sanitation fees • Customary, burial ground, and religious places permits • Signboard/advertisement fees • Fee for fairs, agricultural shows, cattle fairs, industrial exhibitions, tournaments and other public events • Fee for approval of building plans and erection and re-erection of buildings • Fee for licenses or permits and penalties or fines for violation of the licensing rules • Maintenance of Works fee • Entertainment Fee

b. **Definition of the Consolidated Fund** The consolidated fund will be termed as the Yemen National Revenue Fund and will comprise but not be limited to:

- i. All Federal taxes, charges, levies, duties, rates and fees
- ii. Royalties, fees and charges collected by the Federal agencies
- iii. The proceeds from the government share of Oil and Gas exports and domestic sales
- iv. Government shares of earnings from the SOEs
- v. Profits from the Central Bank
- vi. Budget, grants and TA support from donor agencies.
- vii. Proceeds from Treasury bills and Bonds
- viii. Proceeds from sales of capital assets
- ix. Income from the Yemen Future Fund (*Al Yemen Sunduq Al Mustaqbil*)

c. **Mechanism for Fiscal Transfers** We propose that all fiscal transfers from Federal to Provincial levels and from Province to Local Authorities be effected through establishment of a Finance Commission of Yemen at the Federal level and the Provincial Finance Commission at the Provincial levels. Both Commissions will be Constitutional bodies, independent, have necessary expertise and be accountable to the Parliament (Box 13).

Box 13: COMPOSITION AND TERMS OF REFERENCE OF FINANCE COMMISSIONS	
C. FINANCE COMMISSION OF YEMEN	
Composition	
Federal Minister for Finance	Chair
Provincial Ministers for Finance	Members
Renowned Public Finance Experts/Economists*	Chair
President Federation of Chamber of Commerce & Industry	Member
Representative of the Council of Elders/Tribal Leaders	Member
Federal Secretary/Head of Ministry of Finance	Member/Secretary
Terms of Reference	
The Finance Commission of Yemen will make recommendations to the Federal Parliament as regards:	
6.	The vertical and horizontal distribution between the Federation and the Provinces of the net proceeds of the Yemen National Revenue Fund
7.	The making of grants-in-aid by the Federal Government to the Provincial Governments
8.	Review the implementation of the Award made by the Commission
9.	The exercise by the Federal Government and the Provincial Governments of the borrowing powers conferred on them
10.	Any other matter relating to finance referred to the Commission by the Federal Parliament.
D. PROVINCIAL FINANCE COMMISSION	
Composition	
Provincial Minister for Finance	Chair
Five representatives of Local Authorities	Members
Three renowned Public Finance Experts/Economists*	Chair
President of Provincial Federation of Chamber of Commerce & Industry	Member
Representative of the Council of Elders/Tribal Leaders	Member
Provincial Secretary/Head of Ministry of Finance	Member/Secretary
Terms of Reference	
The Provincial Finance Commission will make recommendations to the Provincial Parliament as regards:	
6.	The vertical and horizontal distribution between the Provinces and the Local Authorities, of the net proceeds of the Provincial Revenue Fund
7.	The making of grants-in-aid by the Provincial Government to the Local Authorities
8.	Review the implementation of the Award made by the Commission
9.	The exercise by the Provincial Governments of the borrowing powers conferred on them
10.	Any other matter relating to finance referred to the Commission by the Provincial Parliament
*Two each nominated by the Federal Government and Provincial Government, At least one of these must be female	

d. ***Equitable and Rules Based Fiscal Distribution*** We propose that the fiscal distribution be transparent, predictable, equitable and relatively simple to administer. The mechanism would thus have to be one that :

i. ***Addresses fiscal needs*** We propose that this be achieved by using the following criteria:

- Inverse income distribution: As a measure of disparities in income across the country.
- Inverse population density: This enables variation in cost of service delivery to be adjusted into the distribution of finances.
- Deprivation Index This provides a measure of need by evaluating a range of socio-economic indicators. We propose to use a few key indicators including: % of population with access to clean drinking water; % of Maternal Mortality Rate; % of Infant Mortality Rate; % of Net Enrolment Rate; electricity consumption or % of population with access to electricity

ii. ***Rewards fiscal effort and fiscal efficiency*** This can be achieved by incentivising improvements made by constituent units relating to:

- Growth in Own Source Revenue (OSR) as a % of Total Revenues. For this, the average OSR over a 5 year period would be used as the baseline. The base year from which point onwards the baseline is developed would be agreed between the constituent units.
- Development of a Fiscal Effort Index which allows for comparison across the country with respect to the revenues actually generated by constituent units with revenues that could have been generated calculated on the basis of fiscal capacity. Some of the more well-known measures for fiscal capacity are the Representative Tax System (RTS)⁵⁹ and its subsequent variant, the Representative Revenue System (which basically expanded the tax base used for calculating the RTS and adding non-tax revenue bases used by subnational governments).
- Improving budgetary discipline and accuracy by measuring improvements in closing the gaps between the budgetary allocations and budgetary expenditures, fiscal and budgetary discipline could be monitored and rewarded.

⁵⁹ Developed in 1962 by the Advisory Commission on Intergovernmental Relations (ACIR) in the US, to serve as a method for equalizing the distribution of federal funds. The system is a series of mathematical steps using 27 tax bases to measure fiscal capacity, leading to a national average tax system.

- iii. ***Provides for an equalisation mechanism*** This would take the form of an equalisation grant, which are unconditional, general purpose transfers intended to equalise fiscal conditions among constituent units. There are a variety of ways in which this equalisation method can be arrived at, but for illustrative purposes, we demonstrate the following, simple one and two-window models⁶⁰ for developing an equalisation grant:

<p>Basic Mechanism: One Window</p> $\text{Transfer}_i = (x_i / X) \cdot \text{Fund}$ <p>where $X = \sum x_i$</p> <ul style="list-style-type: none"> ▪ x could be population ▪ x could be gap between “needs” and “capacity” 	<p>Equalization Using Two Windows</p> $\text{Transfer}_i = (x_i^1 / X^1) \cdot a^1 \cdot \text{Fund} + (x_i^2 / X^2) \cdot a^2 \cdot \text{Fund}$ <p>where $a^1 + a^2 = 1$</p> <ul style="list-style-type: none"> ▪ Divide fund between the windows ▪ Use each window for a different equalization purpose
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- e. ***Empowering Provinces to Raise Loans*** We propose that the Constitution grants the Federal and Provincial Governments the right to raise commercial loans, locally and internationally, against their respective consolidated funds (National Revenue Fund and Provincial Revenue Fund respectively). The Federal Government, which is responsible for management of the national public debt, would legislate on the conditions, limits and processes for borrowing by Provinces, including a prohibition for borrowing for financing of recurrent expenditures.
- f. ***Ensuring Fiscal Responsibility*** In order to ensure that the constituent units of the Federation are bound within limits of fiscal responsibility, we propose that the Federal Government legislate on the issue and a Fiscal Responsibility Act define the limits and measures of fiscal responsibility, including but not limited to: capping budgetary deficits and reducing the public debt to GDP ratio (usually 60%); defining *ways and means* limits with the Central Bank; protecting minimum pro-poor investments as a % of GDP (usually 4%); and limiting issuance of sovereign guarantees to a maximum of 2% of GDP.

⁶⁰ Meaning that there are two transfers for equalization, each with a different objective and size. For more information on this, refer the works of Jorge Martinez-Vazquez.

- g. ***Enhancement in Financial Powers*** Along with expenditure and revenue assignments and relevant fiscal autonomy, it is important for the constituent units to have enhanced financial powers, including the full powers of approving financial plans, budgets, projects and investments in subjects under their exclusive jurisdiction i.e. other than the subjects enumerated under the Federal Legislative List and the Concurrent List. In other words, for subjects in their exclusive jurisdiction, the constituent units (Provinces) need not refer anything to the Federal Government. In the case of the subjects under the Concurrent List, the division of financial powers would be determined through Intergovernmental Agreements on Fiscal and Financial Relations (IGAFR), which would clearly spell out the triggers for reference to the Federal Government by Provincial Governments in relation to approval of plans and budgets etc. For example, when Federal Government equity in a joint program exceeds a third of the total equity, approval of the program funding would be done at the Federal level. Moreover, the IGAFR would also detail the institutional arrangements for this purpose and the mechanism for resolution of any dispute that may arise between the Federal Government and the Provinces. Likewise, the Provinces would clearly define the financial powers of the Local Authorities, allowing them sufficient financial autonomy and defining these in the Local Authorities Act, in order for them to deliver basic services. We propose for example, that the Provinces empower the Local Authorities in terms of the value of projects that they can approve at their own level—from the current YR15 million for Districts to YR100 million—and also to identify triggers and processes for the involvement of the Provincial Government.
- h. ***Institutional arrangements for revenue collection*** We propose that while the Constitution should provide for establishment of independent revenue authorities in every Province, it may provide for the Federal Tax Authority to perform agency functions for the Provinces as regards revenue collection, till such time as the Provinces establish their own Revenue Authorities. This could form part of the IGAFR mentioned above and the Federal Tax Authority would charge an agency commission (to be negotiated with the Provinces but usually around 15%) to cover for administrative costs with the possibility of an incentive clause that would reward the Authority for collections over a 3year average for the Province.
- i. ***Localize Zakat*** Instead of the current model of pooling Zakat collections at the central level, we propose that Zakat should be collected and retained at the

Provincial and District levels where it is collected to create a more efficient, Zakat-investment nexus. Furthermore, we propose that the levy of Zakat on private and non-profit organisations (Trusts, Charities, NGOs etc.) that have more than one office or branches in the country, should be made at the location of each of its offices, branches or operations and not at the Head Office level only; this would allow Zakat collections to benefit the areas where the operations of organisations is taking place.

53. **Justification:** One of the major problems with the experience of Federalism is the continued control of the purse by the central government. This leads to a dysfunctional system where responsibility and expenditures are assigned to constituent units, but finances and financial powers are not, thus laying the foundations for failed devolution. In a Federal system, there is a need to ensure that adequate fiscal autonomy is granted but also to provide safeguards against irresponsible public choices that ratchet up expenses for politically expedient purposes or for rent-seeking rather than improvements in coverage and quality of basic services.
54. At the same time, it is important to realise that in most Federal countries, the Provinces have limited fiscal space, owing to the most buoyant taxes such as personal income tax and export duties being federalised. We have therefore proposed to shift a number of taxes, most importantly the Urban Immovable Property Tax, to the Provinces to provide the fiscal fillip they would require in order to fulfil their mandates. Also, our proposal to place a wedge between oil revenues and constituent units and our proposal to include incentives for improving OSR as a % of total revenues means that Provinces would have to substantially improve fiscal effort. At present, the revenue composition is far too lopsided to allow for any meaningful planning at subnational levels.

Composition of Revenues for GoY 2008-2010

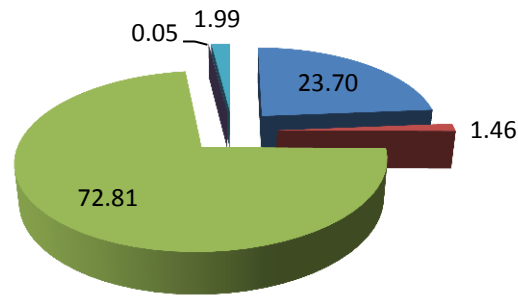
■ (1) Taxes Revenues

■ (2) Grants

■ (3) Property Income, Good & Service Sales (includes Petroleum)

■ (4) Disposal of Non Financial Assets

■ (5) Disposal of Financial Assets and Liabilities Acquisition



INTERGOVERNMENTAL RELATIONS

55. **Proposal:** We propose the following arrangements for intergovernmental relations:

a. **Creation of a number of Constitutional forums** for intergovernmental relations

These would include:

- Council for National Cohesion to serve as the principal forum for intergovernmental coordination, cooperation and dispute resolution (Box 14).

BOX 14: COMPOSITION AND TOR OF COUNCIL FOR NATIONAL COHESION

Composition*

1. Prime Minister of Yemen	Chairman
2. Chief Ministers of Provinces	Members
3. Representative of Leader of the House in the Senate	Member
4. Representative of the Leader of the Opposition in the Senate	Member
5. Senior Federal Cabinet Minister	Member
6. Representative of the Council of Elders/Traditional Leaders	Members
7. Minister for Intergovernmental Relations	Member/Secretary

*The Council may co-opt members as per need.

Key Functions

- The Council shall be responsible to Parliament and shall submit and publish an Annual Report
- The Council shall formulate and regulate policies in relation to matters enumerated in the Federal Legislative List and the Concurrent Legislative List and shall exercise supervision and control over related institutions.
- The Council shall be constituted within thirty days of the Prime Minister taking oath of office.
- The Council shall have a permanent Secretariat and shall meet at least once in ninety days. The Prime Minister may convene a meeting on the request of a Province on an urgent matter.
- The decisions of the Council shall be expressed in terms of the opinion of the majority.

- Establishment of Inter-Sectoral, Inter-Ministerial Forums In order to improve coordination, sharing of information, knowledge and experiences, the Constitution may provide for Ministerial forums organised along thematic lines (Box 15).

BOX 15: SAMPLE COMPOSITION AND TOR FOR INTER-MINISTERIAL FORUMS

Thematic Areas

The sectors for which this forum could be established include:

- Public Finance Management;
- Natural Resource Management;
- e-Government;
- Energy;
- Climate Change;
- Urban Development;
- Population Welfare;
- Youth and Gender issues
- Trade
- Food Security
- Water Resource Management

Composition*

- | | |
|---|----------|
| 1. Federal Minister for relevant sector | Chairman |
| 2. Federal Minister for Planning | Member |
| 3. Provincial Ministers for Planning | Members |
| 4. Provincial Ministers of relevant sector | Members |
| 8. CEOs of relevant State Owned Enterprises or Funds | Members |
| 9. Federal Secretary, Ministry of Intergovernmental Relations | Members |

**The forum may co-opt members as per need.*

Key Functions

8. Setting up of voluntary National Standards (Qualitative as well as Quantitative) for sectoral inputs, processes and outcomes.
9. Ensuring sectoral and geographic consistency in key interventions.
10. Undertaking special, facilitative measures for less developed Provinces.
11. Confidence building and issue(s) resolution between the Federal Government and the Provincial Governments,
12. Facilitating the process for refining the roles and responsibilities of different tiers of Government within the framework of the Constitution and send its recommendations to the relevant authorities.
13. Providing a forum for Inter-Provincial experience sharing and learning.
14. Provide broad direction to the public debate/media interventions regarding educational issues.

- b. **Provide for framing of Intergovernmental Relations Agreements** These could be developed for various sectors (we mentioned the Intergovernmental Agreement for Fiscal and Financial Relations earlier), and help regulate the relations between the Federal and Provincial Governments by defining the purpose, process and plans for

policy cohesion, consistency and coordination, while protecting autonomy. We propose this as an important instrument for cooperative Federalism. Disputes arising from the content, its interpretation or implementation could be placed before the Council for National Cohesion.

c. ***Establishing Key Constitutional Bodies and Offices*** We propose that the following institutions be Constitutional bodies or Offices (positions):

- Constitutional Supreme Court
- General Supreme Court
- Supreme Judicial Council
- Election Commission of Yemen
- Planning Commission of Yemen
- National Economic Council of Yemen
- National Human Rights Commission of Yemen
- COCA and its Chairperson
- SNACC and its Chairperson
- Controller General of Accounts
- Public Service Commission of Yemen
- University Grants Commission of Yemen
- Governor of the Central Bank of Yemen
- Federal Ombudsman
- Finance Commission of Yemen
- Finance Commission of Provinces
- Council of National Cohesion
- Council of Elders/Traditional Leaders

d. ***Other Measures for Improving Intergovernmental Relations*** With a view to promote trust and assist State Building and Peace Building Efforts, we propose the following measures:

- Current efforts to establish the Transitional Justice institutions, including the Commission of Inquiry and Commission for Reconciliation and Justice be expedited. This will provide space for a national process for healing the wounds inflicted by prolonged conflict and sense of deprivation.
- Putting in place an Affirmative Action provision in the Constitution for citizens of the backward, underdeveloped regions; women; minorities; and the disabled in the form of quotas in Parliaments and Local Councils, employment in the civil service and the armed forces; and judiciary.
- Establishing Intergovernmental Relations Departments at Federal and Provincial levels, to serve as the administrative arm for coordination The Terms of Reference are in Appendix 14.
- Establishment of Sectoral Parliamentary Caucus which would allow the Standing, Special, Select and other Parliamentary Committees formed at the

Federal and Provincial Levels to interact with each other on a regular basis. The organisation of the Caucus could be thematic, with, for example, a Health Parliamentary Caucus, an Economic Development Parliamentary Caucus. The Intergovernmental Relations Departments proposed above would provide the logistic and technical support needed for the Caucus.

56. **Justification:** In any Federation, there is a need institute mechanisms to preserve and promote efficient and cooperation-based, as opposed to coercive or adversarial relations based, intergovernmental relations. The absence of inclusive, transparent and independent intergovernmental mechanisms assumes added significance in countries where diversity of views has reached the kind of peak it has in Yemen.
57. Our proposals provide various ways to bridge the gulfs. The value of inclusiveness and independence of the mechanisms might seem two divergent objectives, but we feel that our proposals allow for the Federation to facilitate and protect political, administrative and fiscal autonomy, while creating spaces for collaboration, competition and cohesion. It is also important to underscore that in this process, the role of the influential actors such as the *Sheikhs*, could be key, hence their inclusion in several institutional forums for intergovernmental relations.
58. Moreover, the principles of intergovernmental relations that govern and guide relations between the Federal and Provincial Governments apply equally to relations between the Province and the Local Authorities. Since in this option we are proposing a two-tier Federal structure, the decentralisation from Province to Local Authorities are not detailed and therefore, neither is the precise manner in which these would regulated. Needless to say, it is imperative that the Provinces follow the Constitutional provisions for establishing Local Authorities and transfer responsibilities, roles and resources to them under elected Local Councils, both in letter and spirit. Interestingly, if the Provinces do not comply, it is the very intergovernmental relations forums that we have outlined here that would ensure that errant Provinces are made to comply with Constitutional provisions.

CIVIL SERVICE STRUCTURE

59. **Proposal:** We propose the following structure for the civil service:

- e. Establishment of an independent, merit-based recruitment system We propose the ***establishment of the Public Service Commission of Yemen and the Provincial Public Service Commission*** as independent, Constitutional bodies that will manage the recruitment of civil servants in a transparent, merit-based process for the Federal and Provincial services respectively. It may please be noted that certain services will not fall under the jurisdiction of the Public Service Commissions (e.g. security service, army) for security and other reasons, but based on the provisions of the specific legislation under which these Commissions are established, they will retain an oversight function.

- f. ***Establishment of three categories of civil service*** In sync with the Federal and Provincial structures proposed, we advocate that a Federal Civil Service and a Provincial Civil Service be established. Federal civil servants would be eligible to be posted in any Federal Government Ministry, State Owned Enterprise, Commission and organisations as well as any Provincial Government, Provincial State Owned Enterprise, Commission or organisations. However, Provincial civil servants would only be eligible for posted in the Province to whose civil service they belong. They would have the following group of services:
 - i. Federal Civil Service
 - National Executive Service:
 - Foreign Service
 - National Police Service
 - Information Management Service
 - Customs Service
 - Audit Service
 - Accounting Service
 - Revenue Service
 - Prosecution Service
 - Technical Services
 - a. *Engineering Service*
 - b. *Health Service*
 - c. *Education Service*
 - d. *Finance Service*
 - e. *Economists Service*
 - f. *Legal Service*

ii. Provincial Civil Service

- Provincial Executive Service
- Provincial Police Service
- Information Management Service
- Accounting Service
- Revenue Service
- Land Administration Service
- Municipal Management Service
- Prosecution Service
- Technical Services
 - a. *Engineering Service*
 - b. *Health Service*
 - c. *Education Service*
 - d. *Finance Service*
 - e. *Economists Service*
 - f. *Legal Service*

- g. ***Encadrement of positions*** We propose that in order to ensure recruitment and posting of the most suitable candidates for certain positions, e.g. positions that require broad based experience, a system of encadrement be employed. In this respect we present a few suggestions on the kind of encadrement of positions that may be required. This is not an exhaustive list and presented here only for purposes of illustration:

- The following positions would be encadred for the National Executive Service:
 - i. Principal Secretary to the Prime Minister
 - ii. Principal Secretary to the President
 - iii. Principal Secretary to the Provincial Chief Minister
 - iv. Principal Secretary to the Provincial Governor
 - v. Secretary/Executive Head of Federal Interior Ministry
 - vi. Secretary/Executive Head of Provincial Interior Ministry
 - vii. Secretary/Executive Head of Planning Commission of Yemen
 - viii. Secretary/Executive Head of Ministry of Intergovernmental Relations
 - ix. Chief Secretaries of Provincial Governments
 - x. Additional Chief Secretaries of Provincial Governments

- xi. Principal District Manager (on a shared basis with Provincial Executive Service)
 - xii. Principal Town Manager (on a shared basis with Provincial Executive Service)
- The following positions would be encadred for the National Police Service:
 - i. Head of Federal Police Service
 - ii. Head of Immigration Control
 - iii. Head of Federal Prosecution Office
 - iv. Head of Provincial Prosecution Office (on a shared basis with Provincial Police Service)
 - v. Head of Federal Investigation Office
 - vi. Head of Provincial Investigation Office (on a shared basis with Provincial Police Service)
 - The following positions would be encadred for Foreign Service:
 - i. All executive positions in Yemen's Missions abroad (except for positions identified as Fast Track positions as described later).
 - ii. All positions in UN Missions (except for positions identified as Fast Track positions as described later).
 - iii. All positions in the Foreign Office of Yemen (except for positions identified as Fast Track positions as described later).
- h. ***Establishing a Fast Track Stream*** To provide civil servants with an opportunity to fast track their professional advancement, based on skills, experience and expertise acquired in specialised areas, we propose that a Fast Track Stream be created within the Federal Civil Service structure. This Stream would be filled through open recruitment, meaning that civil servants—both Federal and Provincial—and non-civil civil servants (i.e. any citizen of Yemen) would be eligible to apply based on criterion to be advertised for each position. The Public Service Commission of Yemen would be responsible for recruitment against vacancies under the Fast Track Stream and the process would be through open competition, with all positions advertised. Because these are specialist positions requiring specific expertise, the Terms and Conditions of the Fast Track Stream would be better than regular civil servant positions. The following positions are presented here as indicative of the positions in the Fast Track Stream:

- i. Commercial, Economic and Trade Counsellors in Yemen's Foreign Missions.
- ii. Positions in the WTO and specific UN Committees and Organisations (e.g. UNDESA).
- iii. Chief Economist of the Planning Commission of Yemen.
- iv. Chief Economist of the Provincial Planning Commissions.
- v. CEO positions in State Owned Enterprises, whether at Federal or Provincial level.

i. ***Instituting an Affirmative Action Regime*** We propose the following institutional measures for putting in place an Affirmative Action regime in the civil service:

- i. Quotas for women: At least 10% of positions *at all* levels to be filled by female candidates.
- ii. Quotas for Candidates from under-represented and underdeveloped regions: 5%
- iii. Quotas for Minorities and Disabled: At least 2% of positions to be filled by candidates from minority communities and with disabilities.

j. ***Sharing formula for Federal and Provincial Executive and Police Services***

We propose the following indicative formula for sharing of positions. The sharing formula would be favourable to the Provincial Civil Service on an inverse basis i.e. the lower the position in the hierarchy, the higher the share of the Provincial Civil Service:

- i. Provincial Secretary Positions: 65% Federal Executive Service; 35% Provincial Executive Service
- ii. Provincial Executive Positions Below the Secretary Position: 50% Federal Executive Service and 50% Provincial Executive Service
- iii. Provincial Head of Police Service Positions: 65% Federal Police Service; 35% Provincial Police Service
- iv. Provincial Police Positions Below the Head of Police Position: 50% Federal Police Service and 50% Provincial Police Service

60. ***Justification***: An efficient civil service and one which upholds high standards of integrity and professional competence, is a key element of the success of any

government. By dividing the civil service into two tiers—Federal and Provincial—we propose to achieve synergy between the political and the bureaucratic structures.

61. Division of the bureaucracy into Federal and Provincial serves several purposes: first, it allows for administrative control over the bureaucracy at both levels; second, the existence of a strong Federal service serves as a capacity equaliser, by providing a base level of all quality across the country; it also allows the civil service to act as a vehicle for national integration by enabling civil servants from different areas to serve in communities they may otherwise never engage with—imagine a Federal civil servant from Saa'da serving in Aden or Hadramout and vice versa. In other countries with diverse ethnic and linguistic backgrounds—India and Pakistan for example—the Federal civil servants act as ambassadors for national cohesion.
62. Due to the disparities in educational facilities and their quality, there is wide variation in the quality of personnel and there is a general perception that people from certain areas (e.g. Taiz) get an unfair advantage due to their better educational institutions. The disparity in population size also means that people from the more populous parts of the country get more positions in the civil service. Furthermore, women constitute majority of the population and of the potential workforce, but comprise only 20% of the total civil servants in Yemen. To counter this gap, we have proposed the quotas for women, disabled, minorities and underrepresented areas. This would not only quell the sense of deprivation of these groups, but also create a more inclusive civil service.
63. The reason for proposing encadrement of certain positions is self-evident: some positions need specific skills, expertise and experience. For example, a medical doctor cannot be expected to perform the functions of a Principal District Manager or Head of the District Administration, because he is not trained for it and does not possess the broad based skills required for the position. Likewise, the reason for proposing the sharing formula is to establish a rules-based system of filling encadred positions between Federal and Provincial civil servants, so as to prevent the kind of squabbling, political manoeuvring or outright corruption that might otherwise ensue.
64. In line with modern civil service structures, the Fast Track Stream has been proposed. This allows bright civil servants not to be confined by the shackles of conventional routes of promotion and career advancement, rewards them for acquiring certain skills in demand and creates an aspiration and incentive system for civil servants through the improved pay packages and privileges that would be associated with these Fast Track Promotions. Moreover, by pitting civil servants against candidates from the

private and civil society sectors—these positions would be filled through open competition—it would allow the Public Service Commission of Yemen and the Ministry of Civil Service at both Federal and Provincial levels to gauge the quality of the civil servants—if most positions are filled by non-civil servants, it reflects on the quality of civil servants and would point to the need for instituting better capacity development plans and systems.

CHAPTER 5:
POLICY OPTION 3: FEDERAL STATE WITH THREE-TIERED STRUCTURE
FEDERAL, PROVINCIAL AND LOCAL GOVERNMENTS

I. INTRODUCTION TO THE POLICY OPTION

1. The quest for identifying a system and structure for government has as its core, the objectives of developing legal, political, administrative and fiscal frameworks that enable the State to provide adequate security, protect their fundamental rights and freedoms, provide better services and enable equity in access to justice and to economic opportunities. We have showcased how these objectives can be achieved under a Unitary State (Option 1) and a Federal, two-tiered State (Option 2). As highlighted in those options, in developing a system for intergovernmental relations, we have attempted to propose mechanisms that sit on the cusp of pragmatism and innovation, anchored within a citizen-centric approach that seeks not to side with any particular political view—although we have obviously considered all—but to identify possible options appropriate for Yemen.

2. In Chapter 2, we provided an overview of the issues and summarised our analysis of the feedback we received from the field. One issue highlighted in that chapter is worth repeating here: the proclivity of some stakeholders to either (a) equate Federalism with an attempt to break up Yemen; or (b) to divorce Federalism from decentralisation. As we argued earlier, both notions are incorrect and appear to stem from an inadequate understanding of Federalism both within political parties and civil society alike. Our sincere hope is that our small contribution by way of this paper has helped clarify how Federalism is neither an impediment to decentralisation, nor sows the seeds for national disintegration. We stress this point only because of the risk of these pre-conceived—and mis-informed—ideas acting as a barrier for the National Dialogue to understand how Federalism constitutes one of the viable options for Yemen. In the backdrop of continued op-eds and opinions voiced in Yemeni media that tend to paint Federalism in an unfavourable light, we felt it would be useful to underscore again at the beginning of this Option 3, that outright dismissal of Federalism as a possible option, or viewing it as unsuited to Yemen's context, may perhaps be unwarranted.

Decentralisation with a Federal State

3. Within the Federal State structure, there are several possibilities of division of powers and one of them—a Federal State with two tiers of government, Federal and Provincial—was presented as Option 2. However, in that option, while the political, administrative and fiscal devolution from Federal to Provincial levels was clearly determined, the nature and extent of administrative, financial and fiscal decentralisation from the Province to the Local

Authorities was proposed to be left to the Provinces. The principal reason for this was that under a two-tier model, every Province is sovereign, and decisions on what kind of a decentralisation model they wish to adopt are to be based on their own political choices and on the contexts of their respective economic geography, spatial challenges and assessment of capabilities. We did, however, propose that there be a specific Constitutional provision that makes it incumbent upon all Provinces to establish empowered Local Authorities, with the somewhat unusual suggestion of doing so within a specified time period, and also stressed on the need for this process to follow the same principles which guided the devolution of power between the Federal and Provincial Governments, namely equity, adequate independence and authority and resources that match responsibilities.

4. The advantages and disadvantages of this approach lie in balance. While there is a possibility that left to their own devices and given the right to determine the shape of decentralisation and the powers to share with Local Authorities, some or all Provinces may only carry out decentralisation in form, rather than in function—as is the case at the moment in Yemen. This may lead one to think that the Constitution should determine the form and functions of Local Authorities under Option 2 (Federal system, two-tiered government), but (a) spelling out the details of the powers and roles of the Local Authorities without allowing the Provinces to take the decision, would not only be a gross encroachment upon the powers of the Provinces, but (b) it would be prescriptive and promote a one-size-fits-all approach, rather than a bespoke model. In the event, Provinces may mutually decide to share a common system, but that would be acceptable since it would be out of choice, not lack of it.

5. However, to conceive of decentralisation as being entirely a matter of division of powers, roles and functions between Provinces and local levels would be overly simplistic. There are several other issues to consider before a determination of the depth and kind of the decentralised local governance system can be made. First, basic services such as health, water supply and education are no longer the domain of the public sector alone, particularly in the urban areas. This necessitates a rethink of the mandates of the local levels and calls for public sector financing of these mandates to be aligned with the modes of deliveries of these basic services. Secondly, in States categorised as ‘fragile’—and Yemen is one of them, with a rating of 17 (out of 25) on the State Fragility Index ⁶¹ and the worst rating in the Arab League Index of Unrest (see figure on next page)—issues of State building need to be reconciled with the demands of peace building and ensuring justice for past

⁶¹ Marshal M. G, Cole, R.B, *Global Report on Conflict, Governance and State Fragility*, George Mason University 2012

violations. From the perspective of examining options for governmental structures, this balancing act translates into ensuring that the design favours long term, strategic, confidence building, transitional justice and equity enhancing measures over short term, parochial and populist political agendas. The so-called ‘New Deal’ of engagement in fragile countries stresses these issues and highlights the importance of alignment of State and other stakeholders, including development partners, achieving strategic alignment⁶². The third important consideration is to ensure that the decentralisation design narrows political, social and economic cleavages, not deepen and broaden them. Inadequate attention to inclusiveness of decentralisation (e.g. little focus on role of civil society and private sector), weak intergovernmental relations (e.g. for dispute resolution between different tiers of government) and failing to allow for innovation at the local level (e.g. straitjacketing planning through constrictive rules and procedures) can lead to weak, inefficient decentralised governance and accentuate conflicts.



6. Based on these considerations and keeping in mind the objectives mentioned in paragraph 1.1, we propose a Federal system with a three-tiered governmental structure: Federal, Provincial and Local, with the Constitution recognising all three as legal, formal and independent governments which are nevertheless interdependent on each other as part of a Federation and which are bound by the political, legal, administrative and fiscal framework identified in the Constitution.

II. JUSTIFICATION AND PRINCIPLES

7. The overall justification for proposing a Federal system is the same as those presented in Option 2. Similarly, the principles identified for federalism are the same as those indicated under Option 2. It is pertinent to note that we propose this variant of a

⁶² *Busan and Beyond: Implementing the New Deal for Fragile States*, Briefing Paper, International Peace Institute, 2012

Federal System, rather than a Confederation for two principal reasons: first, the line between Federal and Confederal systems tends to be blurred and there are very few Confederal systems existing today; second, the demand for a Confederation appears to be weak, as evidenced from the views of the majority of the political parties we met—this could be the result of the apprehensions regarding a confederation sowing the seeds for autonomy of different regions. Following from this assessment and keeping in mind the common objective of a united Yemen, we have opted to propose a three-tiered Federal structure as our third option rather than a Confederation.

III. KEY FEATURES

8. The key features of our proposal under this option are presented below:

NOMENCLATURE

9. **Proposal:** We propose the following Arabic terms for governmental levels and for government officials:

- Federal Government to be termed as *Al Hakumat-ul Itahadiya*; Provincial Government as *Al Hakumat-ul Iqleem*; and Local Governments as *Al-Hakumat-ul-Muhaliya*
- Districts: Urban/City Districts to be termed as *Medina*; rural Districts as *Muhafadah*
- Towns/Municipalities as *Muntaqa*; Village Councils to be termed as *Mudiriya*
- The National Assembly/Lower House to be termed as *Majlis Al-Noab Al-Itahadi*; the National Senate/Upper House as *Majlis-e-Shayukh Al-Itahadi*
- The Provincial Assemblies/Lower Houses to be termed as *Majlis Al-Noab Al-Iqleem*; Provincial Senate/Upper House as *Majlis-e-Shayukh Al-Iqleem*
- Local Councils to be named as *Majlis-e-Baladiya*
- Prime Minister to be termed as *Rais Al-Wuzarah Al-Hakumat Al-Itahadiya*
- President to be termed as *Muhafiz Al-Hakumat Al-Itahadiya*
- Chief Minister of Provinces to be termed as *Rais Al-Wuzura-e-Iqleem*
- Governor of Provinces as *Muhafiz Al-Iqleem*
- Mayor of District to be termed as *Umdah Al-Medina* (for Urban Districts) and *Umdah Al-Muhafadah* (for Rural Districts)
- Mayor of Towns (for urban districts) to be termed as *Umdah Al-Mantaqa* and of Village Councils as *Umdah Al-Mudiriya*

10. *Justification:* There is a need to (a) establish a distinction between the Federal, Provincial and Local governments through distinct nomenclatures; (b) at the Provincial level, make a distinction between what are currently termed as Governorates (*Muhafadah*) and the new order of government we term as Provinces or *Iqleem*; and (c) at Local Government level, we aim to retain current nomenclatures to minimise confusion for the general public, although during the transition period leading to a Federal system, a communication and public outreach and awareness program would help familiarise the public with the new structure and its nomenclature. Furthermore, the distinction between urban and rural areas is reinforced through separate titles for urban and rural districts, towns and village councils.

TIERS

11. *Proposal:* Three tiers of government— Federal (*Al Hakumat-ul Itahadiya*); Provincial (*Al Hakumat-ul Iqleem*); and Local (*Al-Hakumat-ul-Muhaliya*).

- The Constitution recognises Federal, Provincial and Local Governments as legal, formal and independent tiers of government, with full political, legal, administrative and fiscal powers under elected representatives.
- The Constitution would define the division of powers of all tiers of Government and enumerate subjects to be dealt with by each tier.
- The Local Governments would comprise of Districts, Towns and Village Councils. The Districts would be divided in terms of urban and rural districts, with Towns formed within the urban districts and village councils within the rural districts.
- The number and geographical distribution of Provincial and Local Governments would be determined according to defined criteria, determined by the Demarcation Commission (discussed subsequently).

12. *Justification:* This three-tiered structure provides the framework for a unified Yemen with political devolution that creates two new tiers of government (Provinces/*Iqleem*) and Local Governments. A three-tiered model is proposed for three basic reasons: first, it achieves complete clarity in terms of the powers to be exercised and the functions to be

performed by all tiers of government by making Local Governments not the creatures of Provinces, but as independent governments whose roles are Constitutionally defined; second, it allows for the existence of a similar legal structure across the country, allowing the Federal Government to execute its role as a coordinator of the Federation and dispenser of public finances in a more predictable, efficient manner; and third, it addresses the demand for a Federal system that provides for full autonomy of constituent units.

13. It is important to underscore the fundamental difference between Options 2 (Federal State with two tiers of government) and 3 (Federal State with three tiers of government). In the former, there are no local *governments*, although decentralised *governance* is assured through the proposed Constitutional provision for Local Authorities to be established by each Province. This approach creates space for Provincial variations and tailoring of the decentralised system according to local political choice. However, this argument, that Federalism, by its very structure would be more decentralist in its politics, operations and finances than a Unitary State, is often borne out to be untrue in practice⁶³, usually as a result of the Provinces not decentralising enough to local levels to start with and hindering the exercise of even the restricted powers through use of administrative fiat that renders local authorities ineffective. In Pakistan, for example, despite a comprehensive legal framework to cover the functioning of local governments, most administrative, financial and budgeting powers were not devolved in practice, using instructions and directives that hampered the exercise of autonomy granted by law to the local levels, including for education, health and municipal functions; moreover, large development authorities were set up in urban areas, whose roles and mandates tended to overlap with the City Governments, resulting in conflicts and poor services to citizens⁶⁴. By creating governments at the local level and distinguishing them from Provinces, an institutional structure is proposed that does not make one order of government the creature of another. In essence, this means there is *devolution* of power to the Local Governments, not merely decentralisation. The way this is achieved of course is through the Legislative Lists under the Constitution, which clearly spell out subjects to be dealt with by different orders of government.

14. From an economic perspective, creation of independent Local Governments would, in theory at least, help foster economic growth, attract investment and allow for greater

⁶³ Brown, A.J and Bellamy, J.A, Ed., *Federalism and Regionalism in Australia*, Australian National University, 2006

⁶⁴ See Moriani, F., *Issues in Devolution, Sustainable Development: Bridging the Policy/Research Gaps in Southern Context*, Oxford University Press 2004; A. Shah and T. Thompson, "Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures," Policy Research Paper 3353, World Bank, 2004; H. M. G. Ouedraogo, "Decentralization and Local Governance: Experiences from Francophone West Africa," Public Administration and Development 23 (2003); James S. Wunsch, "Decentralization, Local Governance and Recentralization in Africa," *Public Administration and Development* 21 (2001)

equity in distribution of wealth. The dynamics of globalisation not only place upon the Federal and Provincial Governments the responsibility of effective public policy, regulation and enabling legal and institutional environments, but also call for robust Local Governments that are able to provide the local infrastructure, market driven services and customer focus that attracts flows of investment and labour. Evidence suggests that the development of 'location assets' in cities and towns, that rely on the infrastructure backbone, range and quality of municipal services and other support systems required by international and local entrepreneurs, is a key determinant of investment flows and development of industrial and retail cluster; in turn, the creation of these local assets are proportional to the political and administrative autonomy and the ability to raise revenues for financing service delivery⁶⁵. By creating an independent Local Government tier, the preconditions for such a symbiotic relationship are met.

GOVERNMENT STRUCTURE

15. *Proposal:*

- Parliamentary, bi-cameral form of Federal (*Al Hakumat-ul Itahadiya*) and Provincial (*Al Hakumat-ul Iqleem*) governmental structure. The Parliament at each level would consist of a Lower House (Assembly/*Majlis Al-Noab*) and an Upper House (Senate/*Majlis-e-Shayukh*). The number of seats in either House at both the Federal and Provincial Government levels would be determined by a Delimitation Commission.
- President of the Federation will be the Head of State
- Prime Minister will be the Chief Executive Officer and Head of Government of the Federal Government.
- At the Provincial level, the Federal structure would be mirrored, with a Provincial Assembly/Lower House (*Majlis Al-Noab Al-Iqleem*) and a Provincial Senate/Upper House (*Majlis-e-Shayukh Al-Iqleem*).
- The Provincial Chief Minister will be the Chief Executive Officer and Head of the Provincial Government.
- There will be a Governor of each Province, who will serve as a representative of the State, as opposed to the Chief Minister, who will be the Head of Government.

⁶⁵ Cheema, S.G. and Rondinelli, *From Government Decentralization to Decentralized Governance*, 2004

- Local Governments at the District, Town and Village level will have elected Local Councils, each headed by an elected Mayor.
- A distinction is proposed between urban and rural local governments in the form of urban and rural Districts and their constituent units, Towns (in urban areas) and Village Councils (in rural areas). This distinction would be made on the basis of defined criteria to be enforced by a Demarcation Commission (which has been defined in the previous section) which would determine the geographical boundaries and classification of each urban and rural Local Government. Changes in the status of a Local Government in terms of its nature would be effected through a process defined by the Demarcation Commission, including the requirement of the passage of a resolution in any local council, by not less than two-thirds majority, requesting for such change and invitation of public feedback on the proposed changes.
- There may be administrative tiers below the Town (*Mantaqa*) and Village (*Mudirya*) such as Wards and Union Councils respectively, but these would be purely administrative units with no legislative functions.
- All tiers of Government would be bound by and comply with the provisions of the Constitution and all legislation undertaken by any tier of government must be in conformity with the principles of policy, legal framework and institutional arrangements identified in the Constitution.
- As per the Constitution, no tier of government would impede or hinder the working of another tier and any disputes, clarifications or complaints would be redressed and addressed through intergovernmental mechanisms provided in the Constitution. Instead, all units of the Federation would work in a cooperative manner, with the Federal Government and the Constitutional mechanisms for intergovernmental coordination providing the platforms for such cooperation. Governments may enter into Intergovernmental Agreements (IGA) in relation to planning, resource sharing, finances and joint projects. Such IGAs may extend to higher tiers of government performing agency functions for them, for example District Governments requesting the Federal Tax Authority to collect certain taxes on their behalf. As independent tiers, each Local Government would also have its own elected Local Councils. In order to achieve the representational objective, the District Local Council would comprise the Mayors of the Town or Village Council as the case may be; female members elected on at least 15% seats reserved for women; and

at least one minority members elected on the reserved seats for minorities, if there are any minorities in the Town or Village.

16. **Justification:** Most of the justification, presented in detail under Option 2, holds true for Option 3 as well. Here, we summarise the key elements and raise additional points (highlighted for ease of reference) that justify our proposal for the governmental structure:

- a. A bi-cameral, Parliamentary form of government is in line with the preferences voiced by different political parties and other stakeholders. Yemen already has a bi-cameral system, except that the Majlis-e-Shura is an advisory council, while in our proposal, its successor, the *Majlis Al-Shayukh* will not only be the forum for representation of the Provinces, but have very strong and substantial legislative powers. This is in keeping with the Federalist model and principles, which provides political space for constituent units.
- b. A robust *Majlis Al-Shayukh* will also serve as an institutional arrangement for minimising the risk of any partisan, parsimonious or patronage politics which the ruling party or ruling coalition in the *Majlis Al-Noab* or Lower House/House of Representatives might attempt.
- c. Having a bi-cameral Provincial legislature will reduce chances of Provincial Governments veering towards any centralist-control tendencies and their absence could result in Provincial Governments dictating to the Districts, as happens in most Federal countries. If we do not have a bi-cameral Provincial legislature, all we could be doing is to shift centralisation from the centre to the region.
- d. The representational nature of Local Governments is proposed to be achieved through the District Councils comprising of Mayors of the Towns or Villages and thus create a system whereby the value chain of governments, is linked and integrated but also ensuring that political participation occurs at every geographical level.
- e. The proposal to use Intergovernmental Agreements (IGA) as instruments of intra-Federation cooperation is based on the principle that the Federal system provides a rule-based mechanism for all spheres of governance. In practice, these formal, legal provisions are supplemented---or overwhelmed---by informal political negotiation and networks, but at the very least, the IGAs provide for a contractual relationship to be established among governments.

ELECTION SYSTEM

17. **Proposal:** The electoral system proposed under Option 2 holds good for Option 3 as well and we summarise the proposals as under, with additional or amended proposals under this options highlighted for ease of reference:

- Elections must be *general* (i.e. have no restrictions in terms of gender, income or any other factor that is discriminatory, with any exclusions from the right to vote clearly identified in election laws and communicated to the public); *equal* (i.e. every vote carries the same weight and in doing so allows for proportional representation); *fair* (i.e. conducted in an impartial manner by an independent, non-partisan election organisation, has an open ballot counting process, accessible polling places, provides equitable opportunities for the electorate to receive political and voter information and provides for equitable treatment of electors, candidates and parties by elections officials, the government, the police, the military and the judiciary); *free* (i.e. fundamental rights and freedoms such as the freedom of speech, registration, association, assembly, access to polls, exercise the franchise and to question, challenge or file complaints are respected, enabled and facilitated through legislation and election system); and *secret* (i.e. the voter's decision is unknown to anyone else).
- The reforms for further improving the functioning, processes and performance of the Supreme Commission for Elections and Referendum (SCER) are proposed to be expedited so as to strengthen its role as a Constitutional, independent and non-partisan institution. Under the SCER, a Delimitation Commission is proposed to be established, responsible for identifying electoral constituencies. The Delimitation Commission would comprise of nominees of each major political party, technical experts and independent observers and would present its recommendations to the National Election Commission, who in turn would publish the report and recommendations for the general public, invite feedback, address complaints and disputes before finalising it.
- President to be elected through an electoral college of Federal Upper and Lower Houses (*Majlis-e-Shayukh* and *Majlis Al Noab Al-Hakumat Al-Itahadi*) and will be the Head of State.
- Prime Minister of the Federal Government will be elected from within the elected members of the National Assembly/House of Representatives (*Majlis Al-Noab Al-Itahadi*)

- National Assembly/House of Representatives (*Majlis Al-Noab Al-Itahadi*) members to be elected directly through universal suffrage and Senate (*Majlis-e-Shayukh Al-Itahadi*) members through an electoral college comprising of National Assembly/House of Representative and Provincial Assembly/Provincial House of Representative members.
- Provincial Assembly/House of Representative (*Majlis Al-Noab Al-Iqleem*) members would be elected through universal suffrage and Provincial Senate/Upper House (*Majlis-e-Shayukh Al-Iqleem*) members through an electoral college comprising the members of the Provincial Assembly and the members of the District Local Councils.
- The Provincial Chief Minister (*Rais Al-Wuzura Al-Iqleem*) will be elected from amongst the members of the Provincial Assembly (*Majlis Al-Noab Al-Iqleem*)
- Governor of each Province to be elected through an electoral college comprising the members of the Provincial Assembly (*Majlis Al-Noab Al-Iqleem*) and the Provincial Senate (*Majlis-e-Shayukh Al-Iqleem*).
- Local Governments to have directly elected Local Councils, based on universal suffrage.
- Mayors and Deputy Mayors of each Local Council to be directly elected, based on universal suffrage.
- At all tiers of government, Federal (*Al Hakumat-ul Itahadiya*). Provincial (*Al Hakumat-ul Iqleem*) and Local (*Al-Hakumat-ul Muhaliya*) and in either House (Upper House and Lower House) at least 30% of seats will be reserved for women and at least 5% seats for minorities. At the Local Council level, this may be no less than 15% for women and at least one minority seat in every Council.
- Under the aegis of the proposed National Election Commission of Yemen, an agreement would have to be reached between political parties to arrive at an estimate of the population for the country as a whole as well as for each electoral constituency, since the census is outdated. This would pave the way both for delimitation and for determination of total seats in the legislatures.
- A mixed elections system—or a variant thereof—that strives to capture the benefits of both a national and regional proportional system as well as a single constituency based system, is proposed to be used.

18. **Justification:** The justification provided for the Election System for Option 2 are equally applicable for Option 3 and are summarised below, with additional or amended points highlighted for ease of reference:

- a. In order to build a participatory democracy, the electoral system needs to provide for inclusion and diversity, be transparent and independent and be able to assuage stakeholder discontent over issues such as delimitation of constituencies. Indeed, the role of an independent Election Commission and the proposed Delimitation Committee assumes great significance, given the widespread perception of gerrymandering⁶⁶ and/or malapportionment⁶⁷ by earlier regimes in Yemen and in the light of the fact that there is ample evidence of delimitation disputes leading to post-election violence in several countries, particularly when population data—the most commonly used criteria for redistricting-- is contentious and outdated. Unless an agreement on the population estimates and their source is reached between political parties in the absence of Census Data, as we have suggested, there is a strong likelihood of electoral disputes racking Yemen.
- b. Moreover, stakeholders we met clearly expressed a preference for directly elected representatives, hence the proposal that election to all legislatures be on a direct election basis under universal suffrage.
- c. In the light of the disparity in population in different regions of Yemen and the conflict over adequate representation of the Southern region, the Plurality system and the Majoritarian system may not be best suited to Yemen—for reasons of bias in favour of the more populous areas and the possibility of the ‘tyranny of the majority’ respectively—although this is subject to further expert debate. In view of our understanding of the issue and in response to the calls made by different stakeholders, a proportional representation system using a mixed election process has been proposed.
- d. The proposal to have a fewer proportion of seats reserved for women at the Local Council level (at least 15% as opposed to at least 30% in Provincial and Federal legislatures) is based on the local cultural contexts whereby active participation of a very large number of female representatives may not be possible at the local level.

ADMINISTRATIVE DIVISION

19. **Proposal:** We propose that Yemen be administratively divided into:

⁶⁶ This refers to the process in which electoral constituencies are drawn in a way that favors a particular political party or a particular candidate.

⁶⁷ Simply put, this means unequal representation in a representative forum or body, such as an Assembly.

- a. **Federal Territories** This would include:
- i. Sana'a City as the Federal Capital Territory
 - ii. Sea Ports
 - iii. Islands, including the Socotra Archipelago
 - iv. Any districts or regions that do not combine to form a Province or do not wish to be part of a Province.
 - v. Charter Cities, established through legislation, based on defined criteria and governed by defined institutional mechanisms.
- b. **Provinces** The number and geographical composition and size of the provinces are left to be determined by a Demarcation Commission. However, we suggest that the number of provinces and their geographical boundaries may not be equal to the existing Governorates, which are both far too many for a country the size of Yemen and appear to have been carved out not on the basis of any considered process, but on political or administrative expediency). Moreover, the population size and density varies considerably across the country, with the largest Governorate (Sana'a City) 20 times the size of the smallest (Al-Mahra) in terms of population⁶⁸ and with the largest Governorate in terms of area (Hadramout) about 218 times larger than the smallest one (Aden). This leads to difficulties in equitable resource distribution and effective management and attendant variations in fiscal capacity and costs of service delivery.
- c. **Districts, Towns and Villages** The number, geographical composition and size of the districts, towns and villages are left to be determined by the Demarcation Commission. However, we suggest that the existing number and size of districts may not form the basis for the demarcation, since these were not based on objective criteria, resulting in too many districts and with little regard to their economic and financial sustainability.

20. In order to arrive at a more appropriate and relevant administrative division propose that a combination of criteria be used for determination of the division. These include, but not limited to, population (size and density); economic viability; cultural and linguistic similarities; and geographical and topographical considerations (natural boundaries such as mountains, deserts etc.). The use of this multi-criteria based administrative division would enable the

⁶⁸ As per 2004 Census.

establishment of more politically, administratively and economically viable administrative units.

21. For this purpose, we propose the establishment of a Demarcation Commission as a Constitutional body, tasked with researching and developing proposals for approval by the Constituent Assembly. The Commission could determine the administrative boundaries by either *using technical analysis based on the kind of criteria, or a combination thereof, mentioned above* as a first line of effort; or, it could determine and publish guidelines on the basis of which proposals for Provincial *administrative divisions could be arrived at through political negotiations between different regions and districts* comprising these districts. These guidelines would indicate the process to be used, set out limitations and indicate the deadline for arriving at the negotiated proposal. Regions and areas (Districts) which fail to arrive at a politically negotiated proposal would by default, form part of the Federal Areas till such time as the Demarcation Commission is able to carry out its technical analysis and suggest the new administrative division.

- a. We further propose that Federal, Provincial and Local Governments be empowered to establish Charter Cities, as a progressive variant of Special Administrative Regions and with a view to integrating with the global community, based on defined criteria for establishing such cities and governed by different institutional mechanisms from the rest of the areas within the jurisdictions of the Federal, Provincial and Local Governments.
- b. Furthermore, we propose that a legally defined distinction be made between urban and rural areas in the administrative division within provinces. This would enable for more equitable and targeted allocation of fiscal autonomy, financial and administrative powers and financial resources. The Local Government Law would articulate the definition, scope, structure, functions and powers of the urban (*Medina*) and rural (*Muhafadah*) districts and their lower formations, the Towns and Villages.

22. **Justification:** Administrative division is as contentious an issue as electoral delimitation and indeed the two are linked closely, since the latter is largely based on the former, although they may not necessarily always overlap. Administrative division has strong political ramifications, since resource allocations, jurisdiction for exercise of political power and influence and the efficiency and capacity of governance and fiscal management, rests on the way in which the administrative division is carried out. The political nature of these issues are the reason why we have proposed that the task be left in the hands of a

Demarcation Commission, which either carries out the task itself through a technical analysis, or provides a framework for the political process yielding proposals. The incentive system built into the latter---reach a political agreement on administrative division or be placed under the Federal Government---would perhaps expedite the process. This approach has been used in several countries and enshrined in their Constitutions, including in Uganda and Somalia.

23. The reasons for proposing a distinction between urban and rural areas are two-fold: firstly, they allow us to recognise the different structures, systems and functions which an urban city district has to perform and to align allocation of managerial capacity, financial resources and powers accordingly; the dynamics, politics and economics of cities is an important consideration for a Federal design and one that is quite often not given adequate analytical attention it requires⁶⁹; and secondly, they enable cities to unleash the benefits of economic development as drivers of economic growth. This is not intended to undermine or undervalue the rural areas, but only to provide a basis for targeting of resources and creating niche management requirements. Similarly, with Charter Cities, we propose an asymmetric federalism that exists in several countries in form or the other (Malaysia, Pakistan, Canada and Iraq), updates the special I economic zones or the free zones idea, and allows for innovative partnerships to be developed. Since Local Governments are recognised as an independent tier, every District would have the power to develop a Charter City.

INTEGRATING TRADITIONAL AND COMMUNITY LEADERSHIP

24. **Proposal:** The proposals for integrating traditional leadership and for enhanced inclusion and social accountability at all tiers made under Option 2, are equally applicable for Option 3. We summarise the proposals as under:

- a. Include the provision for a Council of Community I Leaders at the Federal, Provincial and Local Government levels in the Constitution. Establish this Council under an Act of Parliament that defines the structure, functions and linkages of this Council with other formal institutions.
- b. Give legal coverage to customary law and decisions under it by establishing Customary Law Courts, provided these do not violate the Constitutional provisions of

⁶⁹ King, L., F, *Cities, Subsidiarity and Federalism*, Forthcoming in James Fleming and Jacob Levy, eds. *NOMOS: Federalism and Subsidiarity*, 2012

protection and promotion of human rights and freedoms, are non-discriminatory and are employed for defined purposes and jurisdictions.

- c. Establish Mediation Committees at every District level to serve as an Alternate Dispute Resolution mechanism. The jurisdiction of these Committees would extend to all administrative units of the District and the Local Governments Act would include provisions in this regard.
- d. Include private sector representatives in the National and Provincial Economic Councils of Yemen.
- e. Establish a Provincial and District Citizens' Advisory Committee (CAC) as a Constitutionally recognised forum that assists the Provincial Cabinet and the District Council in terms of improving planning, budgeting and oversight of public investments and expenditures.
- f. Institute a Citizen's Budgeting process and include this as part of the Constitutional provisions on budgeting and planning. The Provincial and District Citizens' Advisory Committee mentioned in (vii) above would review the draft budget prepared by the Provincial Assembly or the District Local Council as the case may be, *prior* to its tabling before the legislatures; the CAC would advise on the needs assessment and prioritisation of the annual provincial budget and present a Citizen's Budget, as an alternative to the official budget. The Assembly or Local Council would review these alternative proposals, include those which are in line with their assessment of public choice and need and provide a formal response, to be included in the budget document, detailing the reasons why recommendations under the Citizen's Budget were not included in the official budget.

25. **Justification:** The justifications provided in Option 2 for the proposals relating to integration of traditional and community leadership and for involvement of the civil society, are applicable to Option 3. In fact one can argue that with Local Governments as independent governments under Option 3, the value of more inclusive governance is enhanced, since collective action is relatively easier to organise than may perhaps be the case in a two-tier model. This is because the involvement and influence of traditional leaders at the local level is generally high and the effort at mainstreaming their roles while creating some boundaries, would not lead to the undermining of the roles of the Local Councils.

DIVISION OF LEGISLATIVE AND EXECUTIVE POWERS

26. **Proposal:** In a Federation, the Constitution provides for division of legislative powers between the Federal Government and the constituent units. The instruments used to achieve this objective are the legislative lists, which enumerate the subjects which are under the jurisdiction of the orders of Government, and contain specific provisions in the Constitution regarding the extent and exercise of Executive authority.

27. Under this option, we propose that there be four legislative lists: a Federal Legislative List (which specifies subjects on which only the Federal Government can legislate); a Provincial Government Legislative List (specifying subjects on which only the Provincial Government can legislate); a Local Government Legislative List (specifying subjects on which only Local Governments can legislate); and a Concurrent Legislative List (which specifies subjects on which Federal, Provincial and Local Governments share the power to legislate).

Federal Legislative List

- i. Foreign Affairs
- ii. Defence
- iii. Maritime Security
- iv. Nationality, Citizenship and Naturalisation, Immigration, Migration and Emigration
- v. Health, with Federal jurisdiction limited to the extent of National Health Policy, Standards and Regulation; National Drug Regulatory Authority of Yemen; National Medical & Dental Council; delivery of health services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- vi. Education, with Federal jurisdiction limited to the extent of National Education Policy, Standards and Regulation; Curriculum, National Education Training Services; delivery of education services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- vii. Food and Agriculture, with Federal jurisdiction limited to the extent of National Agriculture Policy, Standards and Regulation and measures for ensuring food security; delivery of agriculture services, including agriculture extension services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- viii. Drinking Water Supply, with Federal jurisdiction limited to the extent of National Drinking Water Supply Policy, Standards and Regulation; supply sourced through desalination; and delivery of drinking water supply services in Federal territories
- ix. Irrigation, with Federal jurisdiction limited to the extent of National Irrigation Policy, Standards and Regulation; delivery of irrigation services in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- x. Fisheries, with Federal jurisdiction limited to the extent of National Fisheries Policy, Standards and Regulation; fisheries in Federal territories; and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments

- xi. Energy, with Federal jurisdiction limited to National Energy Policy, including Nuclear and Alternative Energy and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- xii. Environment and Climate Change, with Federal jurisdiction limited to National Policy on Climate Change & Environmental Management and interventions of national strategic importance as agreed between the Federal Government and the Provincial Governments
- xiii. Labour
- xiv. Civil Aviation
- xv. Railways
- xvi. Posts & Telegraph
- xvii. Arms, ammunition and explosives
- xviii. Customs
- xix. Census
- xx. National Highways
- xxi. Police, as related to the Federal Territories and establishment of National Police Service
- xxii. Standards of Weights and Measures
- xxiii. Federal Surveys including Geographical, Geological, Seismic Surveys and Federal Meteorological Office
- xxiv. International Treaties, Conventions, Agreements and International Arbitration
- xxv. Telecommunication, to the extent of National Policy, Standards and Regulation; development of telecommunication backbone infrastructure and services; delivery of telecommunication services in Federal Territories; interventions of strategic national importance; and auction and allocation of bandwidths and frequencies
- xxvi. Public Debt of the Federation
- xxvii. Major Ports
- xxviii. Port Quarantine
- xxix. International Trade
- xxx. Public Works, Land and Assets in relation to the Federal territories
- xxxi. Electricity, as related to the Federal Territories; establishment, operation and maintenance of the National Electricity Grid; and establishment, management and operations of electricity generating projects of over 100MW.
- xxxii. Intellectual Property Rights, including registration of patents, copyrights, trademarks and geographical indication.
- xxxiii. Taxes imposed in relation to any subjects enumerated in this List
- xxxiv. Capital Value Tax but not including tax on immovable property
- xxxv. General Sales Tax on Goods
- xxxvi. Excise Duties
- xxxvii. Customs Duties
- xxxviii. Personal Income Taxes
- xxxix. Taxes on Corporations
 - xl. Insurance
 - xli. Fees on any subject enumerated in this List
 - xl.ii. National Planning & Economic co-ordination
 - xl.iii. Regulatory Authorities established under any Federal Law
 - xliv. Central Bank of Yemen, including Monetary Policy
 - xl. v. Currency, Coinage and Legal Tender
 - xlvi. Finance Commission of Yemen
 - xl. vii. Planning Commission of Yemen
 - xl. viii. National Economic Council of Yemen
 - xl. ix. National Investment Authority
 - I. SNACC
 - II. COCA
 - lii. Council of National Cohesion and inter-provincial coordination
 - liii. Constitutional Supreme Court

- liv. General Supreme Court
- lv. Election Commission of Yemen including elections of Federal and Provincial Parliaments, Local Councils and to offices of the President, Prime Minister, Governors, Chief Ministers and Mayors of Local Councils
- lvi. Federal Public Service Commission
- lvii. Higher Education Commission
- lviii. National Human Rights Commission
- lix. Controller General of Accounts
- lx. Creation of New Provinces
- lxi. Inquiries, statistics and information collection as regards any subject enumerated in this List.
- lxii. Environmental Tribunals in Federal territories
- lxiii. National Human Rights Commission
- lxiv. Offences against any Federal Laws
- lxv. Criminal Law and Procedure
- lxvi. Civil Law and Procedure
- lxvii. Stock Exchange, Commodities Exchange and Futures Exchange
- lxviii. Mines, minerals and all forms of natural resources
- lix. Administrative Courts, Tribunals, Commissions for any subject enumerated in this List
- lxx. Libraries, Museums and Archaeological Sites falling within Federal territories
- lxxi. Matters ancillary or incidental to any subjects enumerated in this List

Provincial Legislative List

- 1. Health, except for functions enumerated in the Federal Legislative List
- 2. Education except for functions enumerated in the Federal Legislative List
- 3. Agriculture
- 4. Drinking Water Supply and Sanitation except for functions enumerated in the Federal Legislative List
- 5. Labour except for functions enumerated in the Federal Legislative List
- 6. Housing except for functions enumerated in the Federal Legislative List
- 7. Industries except for functions enumerated in the Federal Legislative List
- 8. Population except for functions enumerated in the Federal Legislative List
- 9. Extractive Industries except for functions enumerated in the Federal Legislative List
- 10. Provincial Surveys including Geographical Surveys, Geological Surveys and Provincial Meteorological Office
- 11. Public Debt of the Province
- 12. Minor Ports and Small Dams as defined in relevant legislation
- 13. Minor Port Quarantine
- 14. Telecommunications except for functions enumerated in the Federal Legislative List
- 15. Energy strategies, programs and projects including for alternative energy
- 16. Climate Change, Conservation & Environmental Management strategies, programs and projects
- 17. Public Works, Land and Assets in relation to the Province
- 18. Taxes imposed in relation to any subjects enumerated in this List
- 19. Fees on any subject enumerated in this List
- 20. Agriculture Tax
- 21. Tax on Services
- 22. Provincial Planning & Economic co-ordination

23. Regulatory Authorities established under any Provincial Law
24. Banking, except for central banking and monetary policy functions
25. Domestic Commerce
26. Provincial Finance Commission
27. Provincial Planning Commission
28. Provincial Economic Council
29. Provincial Investment Authority
30. Council of Intra-provincial Coordination and Cohesion
31. High Court
32. Court of Magistrates
33. Provincial Ombudsmen
34. Provincial Public Service Commission
35. Local Service Commission
36. Inquiries, statistics and information collection as regards any subject enumerated in this List.
37. Provincial Environmental Tribunals
38. Provincial Human Rights Commission
39. Offences against any Provincial Laws
40. Administrative Courts, Tribunals, Commissions for any subject enumerated in this List
41. Culture, Libraries, Museums and Archaeological Sites falling within the Province
42. Matters ancillary or incidental to any subjects enumerated in this List

Local Legislative List

1. Building regulations
2. Land use and subdivision, land development and zoning by public and private sectors for any purpose, including for agriculture, industry, commerce, markets, shopping and other employment centres; residential, recreation, parks, entertainment; passenger and freight transport and transit stations
3. Municipal laws, rules and bye-laws
4. Child care facilities
5. Fire fighting services
6. Local tourism
7. Municipal airports
8. Municipal planning
9. Municipal health services
10. Municipal public transport
11. Local roads, streets and paths
12. Traffic planning, engineering and management including traffic signalling systems, signs on roads, street markings, parking places, transport stations, stops, stands and terminals
13. Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
14. Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
15. Storm water management systems in built-up areas
16. Trading regulations
17. Local economic planning
18. Local commerce

19. Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems
20. Public space management and amusement facilities
21. Billboards and the display of advertisements in public places
22. Cemeteries, funeral parlours and crematoria
23. Cleansing
24. Control of public nuisances
25. Facilities for the accommodation, care and burial of animals
26. Fencing and fences
27. Licensing of dogs
28. Licensing and control of undertakings that sell food to the public
29. Local amenities
30. Local sport facilities
31. Markets
32. Municipal abattoirs
33. Municipal parks and recreation
34. Municipal roads
35. Municipal Courts
36. Municipal Police
37. Noise pollution
38. Pounds
39. Public places
40. Refuse removal, refuse dumps and solid waste disposal
41. Street trading
42. Street lighting
43. Traffic and parking
44. Immovable Property Tax
45. Transit Tax
46. Any tax, fee, charge, levy, tolls, fines, penalties and cess in respect of any of the subjects enumerated in this List.

Concurrent Legislative List

1. Youth Affairs
2. Women's Affairs
3. Police
4. Population
5. Social protection
6. Sports
- 7.
8. Establishment of Charter Cities
9. Industries
10. Media, ICT and Information Management
- 11.

28. **Justification:** We have developed these Legislative Lists, to clarify division of legislative powers and as a consequence, executive authority, since the latter flows from the former.

29. Majority of basic services are transferred either to the Provinces or to the Local Governments, but policy, standards-setting and some regulatory functions are retained at Federal level to ensure a strong Federation and policy coherence. The Provincial Government has also been assigned policy responsibilities in relation to its exclusive jurisdictions, while Local Governments have exclusive powers over a range of subjects enumerated the Local Government Legislative List. The Concurrent List has been kept short, to address subsequent overlapping of functional responsibilities that has been experienced in several countries, including Pakistan⁷⁰, South Africa⁷¹, Nigeria and Australia⁷².
30. Subjects essential to developing national policies, standards, systems and protocols including in areas such as international conventions and agreements; civil, criminal laws and procedures; labour, environmental, weights and measures, quarantines, energy etc. are retained at Federal or Provincial levels. The reason for this is that in these specific areas, uniformity of laws, policies and procedures are required in the country so as not to create institutional chaos.
31. As per norms of Constitutional Federalism, in matters enumerated in the Concurrent List, legislation by the Federal Government assumes superiority over Provincial Legislation, as a form of Constitutional override. For example, if in the area of Youth Affairs both Federal and Provincial Governments enact legislation, the Federal legislation will prevail. However, the existence of effective intergovernmental institutions can minimise the conflict and confusion.
32. A snapshot of the division of powers and functions across the governmental landscape is provided in Table 1.

TABLE 1 : OVERVIEW OF DIVISION OF POWERS AND FUNCTIONS ACROSS GOVERNMENTAL TIERS					
SERVICE	CENTRAL	PROVINCE	LOCAL GOVERNMENT		
			DISTRICT	TOWN	VILLAGE
General administration					

⁷⁰ Moriani, F, *The Eighteenth Amendment in the Constitution of Pakistan: Implications, Opportunities and Challenges*, UNDP 2011

⁷¹ Steytler, N., *The Management of Concurrency*, University of the Western Cape, 2005

⁷² *Distribution of Powers between Central Governments and Sub-national Governments*, United Nations Committee of Experts on Public Administration, 2011

Police	x	X	x		
Fire Protection			x	x	x
Civil Protection		x	x	x	x
Criminal justice	x	x			
Civil justice	x	x			
Civil status register	x				
Statistical Office	x	x			
Electoral register	x	x			
Education					
Pre-school	x	x	x		
Primary school	x	x	x		
Secondary school	x	x			
Vocational & technical	x	x			
Higher education	x	x			
Adult education	x	x			
Social welfare					
Kindergarten & nursery			x		
Family welfare services	x	x	x		
Welfare homes	x	x	x		
Social security	x	x	x		
Public health					
Primary care	x	x	x	x	x
Hospitals	x	x			
Health Protection	x	x	x	x	x
Housing and Town Planning					
Housing	x	x	x	x	x
Town planning			x	x	
Regional planning		x	x		
Transport					
Roads	x	x	x		
Transport	x	x	x		
Urban roads			x	x	
Urban rail	x				
Ports	x	x			
Airports	x	x	x	x	
Environment					
Water & sanitation			x	x	x
Refuse collection & disposal			x	x	x
Cemeteries and crematoria			x	x	x
Slaughter-houses			x	x	x
Environnemental protection	x	x	x	x	x
Consumer protection	x		x	x	x
Culture, leisure and sports					
Theatre & concerts	x	x			
Museums & libraries	x	x	x	x	
Parks & open spaces			x	x	x
Sports & leisure			x	x	x
Religious facilities			x	x	x
Utilities					
Gas services			x		
Water supply			x	x	x
Electricity	x	x	x	x	
Economic					
Agriculture, forests, fisheries	x	x			
Economic promotion	x	x	x	x	
Trade & industry	x	x	x	x	
Tourism	x	x	x	x	

FORMAL JUSTICE STRUCTURE

33. **Proposal:** Table 2 shows the proposed justice system, with changes in relation to Option 3 highlighted in blue, bold, italics:

TABLE 2: PROPOSED FORMAL JUSTICE SYSTEM		
Institution	Composition	Jurisdiction/Functions/Powers
Supreme Judicial Council	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - The Chief Justice of the General Supreme Court - Federal Minister for Law - The Attorney General - Four representatives of the practicing legal professional, nominated by professional lawyers associations, at least two of whom must be female - Four members of the National Assembly, nominated by the Speaker of the Assembly, at least two of which must be from the Opposition and at least one of whom must be female - Six members of the Federal Senate, nominated by the Speaker of the Senate, at least three of which must be from the Opposition and at least two of whom must be female - Three legal experts/academics, nominated by the President, at least one of whom must be female - Registrar of the Constitutional Supreme Court as Non-voting Member/Secretary 	<ul style="list-style-type: none"> - Advise the Prime Minister of the Federal Government and the President of the Federation on justice sector policies, standards and oversight, as well as capacity building of judicial officers - Advise the Prime Minister of the Federal Government on the appointment of judges of the Constitutional Court, the General Supreme Court, the High Courts, the Specialty Courts and the Traditional and Customary Law Courts, as well as the Prosecutor General. Appointments in the Courts of Magistrates to be made by the Provincial Governments directly, through a Provincial Judicial Service Commission for this purpose. - Exclusive jurisdiction over Constitutional matters, and issues connected with decisions on constitutional matters - Decide disputes between Federal and Provincial Governments concerning the Constitutional status, powers or functions of any of those organs of State - Decide on the constitutionality of any Bill - Decide on the constitutionality of any amendment to the Constitution - Determine whether any public official(s) has/have failed to fulfil Constitutional obligations
Constitutional Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the Constitutional Supreme Court - Ten other judges of the Constitutional Supreme Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters defined in Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of any Court other than the Constitutional Supreme Court
General Supreme Court	<ul style="list-style-type: none"> - Headed by the Chief Justice of the General Supreme Court - Ten other judges of the General Supreme Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters that are not assigned to any other Court by Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of the Speciality, Customary or Magistrate's Courts unless otherwise stated in any Act of Parliament
High Courts	<ul style="list-style-type: none"> - Headed by the Chief Justice of the High Court, to be established in every Province/Iqleem - Ten other judges of the High Court 	<ul style="list-style-type: none"> - <i>Original jurisdiction</i> over matters that are not assigned to any other Court by Acts of Parliament - <i>Appellate jurisdiction</i> over appeals against orders and judgements of the Speciality, Customary or Magistrate's Courts unless otherwise stated in any Act of Parliament
Specialty Courts	<ul style="list-style-type: none"> - One Specialty Court each for Banking, Taxation, Revenue, Intellectual Property and Anti-Corruption at Federal and Provincial Government levels - <i>Municipal Courts at District and Town levels</i> - Each Court comprising a bench of at least 5 Judges, <i>except for Municipal Courts which may comprise not less than two Judges</i> - <i>The Municipal Courts would be structured as a Minor Offence Court, with recourse to Alternative Dispute Resolution where possible and desirable.</i> 	<ul style="list-style-type: none"> - Jurisdiction over respective subject matters only as defined in Acts of Parliament
Traditional & Customary Law Courts	<ul style="list-style-type: none"> - Headed by the Head Judge of the Traditional & Customary Law Court - At least three other judges in each Traditional & Customary Law Court 	<ul style="list-style-type: none"> - Determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice
District Courts of Magistrates	<ul style="list-style-type: none"> - Headed by the Chief District Judge - Judicial Magistrates as may be appointed by the Provincial Government through the Provincial Judicial Service Commission, but no less than at least three in each District 	<ul style="list-style-type: none"> - Jurisdiction as defined in Acts of Parliament

34. **Justification:** The justifications provided for the judiciary system under Option 2 are applicable for Option 3 as well. The only change proposed from Option 2 is in relation to the inclusion of a Municipal Courts. These are necessary to ensure that offences under

the Municipal Act(s) are heard and disposed of at the District or Town level outside of the general District Court system, since the latter are likely to have large cause lists, resulting in delays that would betray the purpose of delivery of quick justice on the more immediate and less serious nature of municipal offences. The proposal for structuring it as a Minor Offences Court is also aimed at speedy dispensation of justice⁷³. Likewise, the proposal to allow referral of municipal offences to the District-based Alternative Dispute Resolution (ADR) mechanism, targets early settlement of the case. Since ADR mechanisms use mediation and arbitration as tools, rather than investigation, the caseload on courts can be reduced substantially.

35. Our proposed justice sector structure is based on the twin considerations of *facilitating access to justice by citizens*, and *ensuring the integrity and independence* of the judiciary, by making the judges' appointment not the decision of an individual or a closed group, but of a multi-stakeholder forum (Supreme Judicial Council) which includes opposition members of Assembly and Senate, as well as representatives of the Provinces (through the Senate-nominated members); the proposal for appointing lower court officials through a Provincial Judicial Service Commission is also a step in this respect.

PUBLIC GRIEVANCE REDRESS MECHANISMS

36. **Proposal:** In addition to the proposals made for public grievance redress under Option 2, we propose the following:
 - a. **Establish the Office of the Local Government Mohtasib** We propose that the Office of the *Mohtasib* be established at the Local Government level, in addition to any Federal and Provincial Mohtasibs. The Local Government Mohtasib will have jurisdiction over all local governments and may be organised to cover a cluster of Districts, rather than be established in every district.
 - b. **Local Governments to have an Office of Open Government** In order to protect citizen's fundamental right for access to information and as a means to ensuring transparency and progressing towards Open Government, it is proposed to establish the Office of the Information Commissioner be established at the District, Town and Village Council levels, in addition to the Federal and the Provincial Governments. The

⁷³ Justice Khalil-ur-Rehman Khan, *Operationalisation of Small Claims and Minor Offence Courts in Pakistan*, briefing paper, Provincial Judicial Academy, 2003

specific functions, powers and processes would be as per an Act of Parliament by the appropriate legislature. As with the Office of the *Mohtasib*, the Federal, Provincial and Local Governments would need to reach an agreement on which of the two *Mohtasibs*—Federal, Provincial or Local—would exercise jurisdiction over subjects enumerated in the Concurrent Legislative List, or whether joint jurisdiction would be exercised. The Information Commissioner would receive, review and investigate complaints from citizens related to denial, delays or prevention from access to public information. The procedures, processes and structure of the Information Commissioner would be governed by the provisions of an Act of Parliament. In several Federal States, the offices of the *Mohtasib* and the Information Commissioner are combined and we propose the same for Yemen.

- c. The Information Commissioner will help public agencies under his/her jurisdiction establish Public Information Officers in every agency to facilitate citizen's access to information and will also help develop appropriate rules and regulations.
- d. The Access to Information legislation would be developed from the perspective of enhancing and facilitating access, focusing on a mix of voluntary and obligatory disclosure; and minimizing exclusions of categories of information, employing the public interest test⁷⁴.

37. **Justification:** Administrative justice forms an important element of the Public grievance redress mechanisms. The institution of the *Mohtasib* or Ombudsman is a key institution for ensuring administrative accountability and has proved to be a very effective of addressing gaps in administrative efficiency, reduction in administrative delays and in providing free and speedy redress of public grievances. Ombudsmen are particularly useful institutions in Federations, given that functions, powers and resources are devolved to several order of government, which necessitates oversight at different tiers of service delivery.

ACCOUNTABILITY

⁷⁴ When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

38. **Proposal:** To round off our proposals regarding the justice and accountability sector, we propose that the recommendations given for strengthening public accountability under Option 2 also be recommended for Option 1, as summarised below and with additions and amendments highlighted:
- a. **Focus on Legislative Accountability:** We propose that Parliament establish mechanism for legislative oversight, including:
 - i. Establishment of a Federal Public Accounts Committee (FPAC), as a Standing Committee of Parliament, whose mandate would be to review and report on (a) the Public Accounts of Yemen; (b) *all* reports of COCA; and (c) any other matter referred to it by the Parliament from time to time. The FPAC would be concerned with efficiency of program delivery as well as the adherence to government policies, directives and standards and will hold government to account for effective public administration and due regard for public funds. The FPAC would be headed by a member of the National Assembly from amongst the Opposition benches, nominated or elected by all the Opposition Members. It would have 10 other members, 5 from the National Assembly, 3 from the Senate and two from the Council of Elders/Traditional Leaders; at least 3 of the overall membership would be female. The deliberations, reports and recommendations of the FPAC would be public documents and all efforts would be made to ensure widespread public disclosure through print and electronic media and official FPAC and government websites.
 - ii. A Provincial Public Accounts Committee (FPAC) at the Provincial level along the same lines as the FPAC.
 - iii. A Cabinet Committee on Public Accountability at the Federal and Provincial levels headed by the Senior Minister of the Cabinet and comprising five other Ministers (Finance, Law, Planning, Interior and Social Sector).
 - iv. Establish Industry-specific Regulators at the Federal Government level for all sectors where standards-setting, compliance and regulation functions are retained at the Federal level under the Federal Legislative Lists; and at the Provincial and local level for subjects falling under the exclusive jurisdiction of the Province and Local Government levels. For subjects in the Concurrent List, the constituent units may decide on which level of Government would perform the regulatory function. Usually this is the Federal Government level but any variations this norm would be negotiated between the constituent units.

- v. A District Committee on Public Accountability headed by the Deputy Mayor of the District Local Council and comprising five other District Council members, at least two of whom must be female and a representative of the tribal or community leaders.
- b. Make the Supreme National Authority for Combating Corruption (SNACC) independent and extend its operations up to the District level: Independence of SNACC and firewalling from administrative and political influence is critical to its effectiveness and credibility. There are two ways in which the independence of SNACC can be approached: one, it must be converted into a Constitutional body, with the Head of SNACC appointed by the President of the Federation on the advice of the Prime Minister, who in turn must consult the Leader of the Opposition in both the Lower and Upper Houses. We propose further that the term of office of the Head of SNACC should be for 5 years and he/she should be completely empowered in terms of executive authority for recruitment, budgeting and internal monitoring. Moreover, till such time as the Provinces are able or willing to establish their own institutional mechanisms for anti-corruption, the reach and operations of SNACC must be grounded at the District level.
- c. Establish Anti-Corruption Courts: We have already proposed the establishment of these specialty courts in the section on formal justice sector.
- d. From Accounting to Accountability: We propose a separation in accounting and auditing functions, with the establishment of a Controller General of Accounts at the Federal and Provincial levels, allowing the Central Organisation for Control and Auditing, to perform auditing functions alone. The jurisdiction of the Provincial Controller General of Accounts is proposed to extend to the Local Governments.
- e. Whistleblower Act: In order to protect and encourage sharing of information about corruption and corrupt practices, we propose that the Federal and Provincial Parliaments enact Whistleblower legislation.
- f. Ambient Accountability: We propose to introduce what we term as the 'Open Kitchen' approach to accountability, building on the concept of ambient accountability. Just as in a real-world open kitchen where the cooks prepare food using ingredients that are visible and performing specific tasks under the management of a head chef, coordinating, communicating and reporting to the chef in full view of the diners for whom the food is being prepared, our Open Kitchen approach has three elements: (i) Transparency as regards who it is that is working to deliver the service; (ii) Clarity in terms of roles and functions; and

(iii) Making citizens aware which mix of tools and processes are being used to deliver the service or manage the process. We propose that citizens' access to tools and mechanisms for public accountability needs to be facilitated and that ambient accountability tools, such as *use of mobile phones for filing, tracking complaints over a toll-free Call Centre*, with the number prominently displayed in public places where services are being delivered; *citizen's charters* in Arabic, published and broadcast over electronic media; *use of postal services for filing and tracking complaints as a free service* for citizens; *placement of signs and posters with contact numbers of relevant persons at every public agency* premises and other modes of accountability 'here and now' be instituted, led by SNACC in conjunction with Federal, Provincial and Local Governments and in consultation with the Council of Elders/Traditional Leaders, as well as other social accountability forums proposed.

- g. Social Accountability: In addition to the several forms of social accountability proposed in earlier sections (e.g. Citizen's Budgeting) as well as above, we add the proposal that amendments be made in the structure and processes of the Public Procurement Regulatory Authority, to include a Citizen's Witness in all procurement processes. The Citizen's Witness would be nominated by local NGOs and/or traditional leaders such as Sheikhs and religious leaders, who would act as an observer and report on the transparency and independence of the procurement process. Furthermore, we propose that the Higher Authority for Tender Control (HATC) be given an independent status, removing it from the administrative control of the executive and placing it under an independent Board of Directors to be appointed as provided under an Act of Parliament.
- h. As part of the Social Accountability system we also propose the mandatory conduct of customer satisfaction surveys using instruments such as Citizen Report Cards (Appendix 15). However, since the service delivery under the three-tiered structure is mainly at the Provincial and Local Government levels, the Citizen Report Card system would be best suited to those levels, with possibilities of linking the results to formal institutional and individual performance reviews of staff, budgeting and capacity building, as has been done in the Philippines, Uganda, Ukraine, India and Pakistan⁷⁵.

- 39. **Justification:** The justifications provided for the proposals on accountability, as detailed in Option 2 are applicable to Option 3 as well. The reasons for suggesting the

⁷⁵ *Citizen Report Card Surveys-- A Note on the Concept and Methodology*, World Bank 2004

additional arrangements, such as introduction of Citizen Report Cards and the establishment of a District Public Accountability Committee are to stress on the role of the legislative oversight function of the district council, as well as to create a linkage between citizen satisfaction with the range and quality of basic services provided, particularly at the local government level and the accountability process of delivery agents.

NATURAL RESOURCE MANAGEMENT

40. **Proposal:** The proposals made for natural resource management under Option 2 hold good for Option 3 as well, with the following additions and amendments, as highlighted below:
- a. **Natural resources to be jointly owned** by the Federal, Provincial and Local Governments. This means that decision on grant of concessions, licensing and related contractual decisions as related to extractive industry to be made jointly by the Federal Government, the Provincial Government and the Local Government in whose jurisdiction the concession, licensing etc. is to be carried out. This would be done through a National Extractive Industry Committee, established under an Act of Parliament, which would work with the Federal Ministry of Natural Resources, the Public Procurement Regulatory Authority and civil society to develop standards, ensure transparency and oversee the enforcement of contractual obligations. Recommendations of this Committee would be tabled before the Federal Parliament as input into the decisions to be taken on any issue related to the extractive industry.
 - b. **Holistic Natural Resource Management** by establishing a Ministry of Natural Resource Management at Federal level, which would be responsible for managing the whole of the natural resource management sector, not just oil. This new Ministry if proposed to be formed by merging the existing Ministry of Water Resources and the Ministry of Mineral Resources. The Yemen General Corporation for Oil & Gas/Mineral Resources (YGCOM), the Yemen Oil Refinery Company and the Yemen LNG Company would continue to exist, but the Petroleum Exploration and Production Authority (PEPA) and the General Department of Crude Oil Marketing (GDCOM) would be merged in the YGCOM.
 - c. For revenue sharing, a **50-50-50 Plan is proposed**, enshrined in the Constitution, under which revenues from extractive industries, including revenues from exports, are proposed to be shared as follows:

- **Citizen's Share: 50%** to be distributed to each citizen of Yemen, as a cash transfer (*People's Payment*) at the rate of US\$0.50 (50 cents) per capita per day, net of an income tax applied at a flat rate and deducted at source. Distribution to be managed by a Special Purpose Vehicle established for this purpose. Payments would be capped at 3 members per family (Box 10).

BOX 10: FAQs FOR THE DIRECT CASH TRANSFER MECHANISM FOR YEMEN

What is a Direct Cash-Transfer?

It is a payment made to citizens directly by the Government in the form of cash. The recipients would be free to choose how and on what they spend this cash.

Who will be eligible for the Cash Transfer?

Every citizen of Yemen is eligible, subject to a maximum of three persons per household.

How much money would each citizen receive?

The payment will be made on the basis of the equivalent of US\$ 0.50 (50 cents) per day per person or US\$15 per month per person. Every payment will be accompanied by an 'account summary' indicating the payments made every month, any arrears and the date on which the next payment would be made.

What would be the frequency of payments?

Payments would be made on a monthly basis.

What will be the mode of payment?

There are several options: **m-Money** for citizens with mobile phones—once they receive an SMS that the payment is available for collection, they can 'encash' at any participating retailer—these retailers could be any shopkeeper such as those already part of the pre-paid card vendor network, or bank, who will receive a small commission to be paid by the Government; through **ATM cards** to be used like regular ATM cards for withdrawal at any ATM machine; in areas where there are no ATM machines, or where retailers are not available or willing to participate, the **Post Office** would be used, with either the postman delivering the cash like a money order (suited for women whose mobility is limited) or at the post office itself. A combination of all these modes would likely be used.

Will there be a tax on the payments?

Yes, a tax applied at a flat rate (to be determined), deducted at source.

Who will be responsible for the 'People's Payment'?

A not-for-company established under an Act of Parliament, which will have an independent Board of Directors headed by a CEO recruited competitively. The Board will have representation from Government, civil society and

Who verifies the payments?

There will be five levels of verifications: the Central Organisation for Control of Auditing (COCA), who will carry out a bi-annual audit; an independent firm of Chartered Accountants hired by the Special Purpose Vehicle, who will conduct a risk-based audit every quarter; the Council of Elders/Traditional Leaders, who will provide oversight through field-visits, beneficiary interviews; the Citizen's Advisory Committees to be formed in every District (these are referred to in paragraph 4.17); and by the Special Purpose Vehicle, who will institute its own review process, including acting upon complaints and feedback given by the public through websites, in writing or in person.

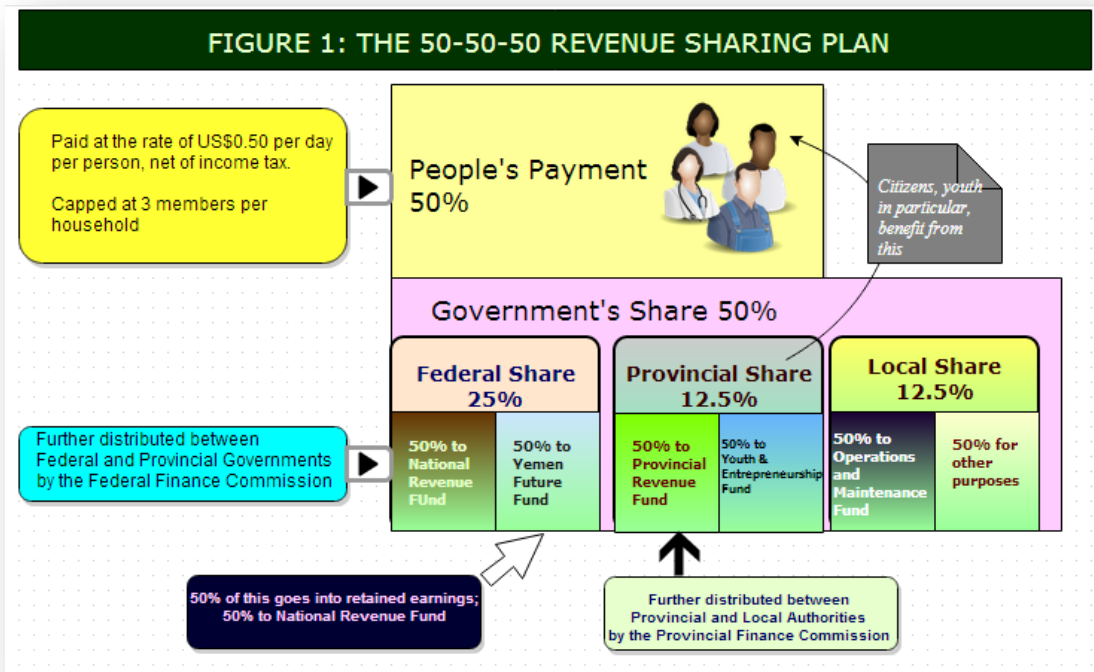
Who will receive and redress complaints against payments?

Complaints regarding the *administration* of payments (e.g. delays, incomplete or irregular payments, denial of access to information) would be made to the Federal or Provincial *Mohtasibs*; complaints regarding *corruption* to be made to SNACC; disputes between community members and complaints against any wrongdoing by community members to be made to the Council of Elders/Traditional Leaders or the District Mediation Committees.

the balance (net of Citizen's share), to be distributed as follows:

- Federal share: 25%: Of the Federal share, 50% goes into the Yemen National Revenue Fund (Government's consolidated fund) for further redistribution between Federal and Provincial Governments under the National Finance Commission (described in next section). The remaining 50% of the Federal Government's share goes into Yemen Future Fund (*Al Yemen Sanduq Al-Mustaqbil*). The Fund is proposed to be established as a not-for-profit company which serves as an investment fund manager. Out of the profits generated from the *Al-Yemen Sanduq Al-Mustaqbil*, 50% is reinvested into the fund (as a form of retained earnings), which can be drawn down for specified purposes only—changeable only through a referendum and requiring a double majority vote⁷⁶ (majority of Provinces and majority of voters within the Province); and 50% is to be transferred into the Yemen Revenue Fund.
- Provincial share 12.5%: Of the Provincial share, 50% goes into the Provincial Revenue Fund (consolidated fund) for further redistribution between Provincial and District Governments. The remaining 50% goes into a Youth Entrepreneurship and Innovation Fund, which serves as a Government-led Venture Capital Fund to promote entrepreneurship in the Provinces and which may be established and managed in partnership with the Central Bank and private sector.
- Local Government share 12.5%: This would be paid to local governments where the natural resource is extracted. Local Governments would be free to use these funds as per their own plans, with the limitation that at least 50% of these be used for meeting Operations & Maintenance expenditures.
- Figure 1 contains a visual representation of this proposal.

⁷⁶ This would also set up a direct democracy mechanism in Yemen that runs parallel to the indirect democracy in the form of a representative Parliament at Federal and Provincial levels and elected Local Councils.



- A one-time **Royalty Payment** will be made to Provinces and Local Governments from where majority of oil or other natural resources is extracted, as a means of compensating for lost revenues over the past several years. This payment will be a token payment, made as a gesture of goodwill by the Federal Government, based on a formula to be devised by the National Finance Commission, which will analyse the international experience in this respect, including use of well-head pricing systems and also negotiate a settlement between the Federal and relevant Provincial Government(s) on the period for which the Royalties would be paid and on the size, instalment and mode of each payment. This payment would be made from the current stock of profits with the Yemen Petroleum Company and the Ministry of Oil and Minerals. Similarly, a one-time Royalty Payment would also be made to Provinces where oil or gas is discovered and extracted from after the new Constitution comes into being.
- d. As a measure of fairness, any private land which needs to be acquired for extraction or exploration of natural resources would be acquired through a Land Acquisition Act. Payment to the landowner would be made based on an **individual royalty**, calculated to arrive at a fair market value.

- e. Imposition of a **Business4Community (B4C) Tax** at the rate of 3% on net earnings of companies—whether foreign or local—working in the extractive industries. This tax would be collected by the Local Government where the extractive industry is based and would be eligible for use only in the districts where the extraction or exploration is being carried out; these funds would only be eligible for use in the education and health sectors, with the companies paying this tax, sitting on a District Steering Committee that would oversee the use of the tax proceeds. Furthermore, through specific provisions in the National Tax law, voluntary financial contributions by companies in these districts under their Corporate Social Responsibility Programs, made as top-ups to the B4C Tax would be tax deductible; this would serve as an incentive for the companies to provide additional funding for local projects that benefit local communities.
 - f. As a measure of transparency, the National Extractive Industry Committee would establish and maintain a **Natural Resources Portal** on which all data and information related to natural resource contracts, licenses and updated information on production, revenues, exports, taxes collected and status of distribution of resources, royalties etc. would be updated. There would also be an Online Complaint system whereby any citizen would be able to file a complaint or report any suspected corruption and these complaints would be redirected in real time to SNACC.
41. **Justification:** The reasons put forth under Option 2 for the proposals relating to Natural resource management are also valid for Option 3, with the additional justification that under the three-tier structure, local governments as independent entities are as eligible for receipt of shares from natural resource revenues, as are the Federal and Provincial governments. Moreover, the B4C Tax proposed should be collected directly by the respective districts and retained and used within the district since the idea is to benefit local communities in as direct a manner as is possible. It is also important to underscore that the reason why under the 50-50-50 Plan the Citizen's Share is proposed to be taxable is to inculcate a taxation culture and to establish a stronger, tax-based State-Citizen relationship.

FISCAL AND FINANCIAL AUTONOMY

42. **Proposal:** In addition to the proposals made under Option 2 with regard to fiscal autonomy of constituent units, we propose the following for Option 3:

g. **Create an enabling fiscal empowerment** by aligning subjects for which the three orders of Government are responsible, with the power to raise taxes. In this respect, we propose the following:

TABLE 3: INDICATIVE LIST OF TAX AND NON-TAX REVENUE GENERATION POWERS		
Government	Taxes	Non-Tax Revenue Sources
Federal	<ul style="list-style-type: none"> - Personal Income Tax - Corporate Tax - Capital Gains Tax - General Sales Tax - Highways Tax - Zakat in Federal Areas - Taxes on Telecommunication - Taxes on Electricity - Taxes on Aviation - Taxes on Tobacco - Wealth Tax 	<ul style="list-style-type: none"> - Customs Duties - Federal Excise Duties - Import Duty - Export Duty - Fees on licensing, registration for subjects under the Federal Legislative List - Share from revenues from natural resources
Province	<ul style="list-style-type: none"> - Tax on Services - Agriculture Tax - Fisheries Tax - Qat Tax - Tax on Transfer of Property - Hotel Tax - Zakat in Provinces - Entertainment Tax - Roads Tax - Provincial Road Tax - Motor Vehicle Tax - Any other tax authorised by the Provincial Government 	<ul style="list-style-type: none"> - Education Cess, Fee - Health Cess, Fee - Natural Resource Licensing Fee - Property Transfer Fee - Fees for licences granted by the Provincial government. - Fees for specific services rendered by a Provincial government - Fees in respect of schools, colleges, and health facilities established or maintained by the Provincial Government. - Collection charges for recovery of tax on behalf of the government as prescribed - Toll on new Provincial roads, bridges, within the limits of a Province, other than national highways and roads - Share from revenues from natural resources
Local Government	<ul style="list-style-type: none"> - Immovable Property Tax - Business4Community Tax - Local Zakat Tax - Municipal Taxes - Water Tax - Urban Development Tax - Business Registration Tax - Tax on vehicles other than motor vehicles 	<ul style="list-style-type: none"> - Land Revenue - Stamp Duties - Health Cess, Fee - Property Transfer Fee - Fees for licences granted by the local government. - Fees for specific services rendered by a local government - Collection charges for recovery of tax on behalf of the government - Toll on new District roads, bridges, within the limits of a district, other than national and provincial highways and roads - Shops and kiosk rates - Abattoir fees - Marriage, birth, and death registration fees - Market/motor park fees - Sanitation fees - Customary, burial ground, and religious places permit - Signboard/advertisement fees - Fee for fairs, agricultural shows, cattle fairs, industrial exhibitions, tournaments and other public events - Fee for approval of building plans and erection and re-erection of buildings - Fee for licenses or permits and penalties or fines for violation of the licensing rules - Maintenance of Works fee - Entertainment Fee - Share from revenues from natural resources

- h. **Definition of the Consolidated Fund** The consolidated fund will be termed as the Yemen National Revenue Fund and will comprise but not be limited to:
- All Federal taxes, charges, levies, duties, rates and fees
 - Royalties, fees and charges collected by the Federal agencies
 - The proceeds from the government share of Oil and Gas exports and domestic sales
 - Government shares of earnings from the SOEs
 - Profits from the Central Bank
 - Budget, grants and TA support from donor agencies.
 - Proceeds from Treasury bills and Bonds
 - Proceeds from sales of capital assets
 - Income from the Yemen Future Fund (*Al Yemen Sunduq Al Mustaqbil*)
- i. **Mechanism for Fiscal Transfers** We propose that all fiscal transfers from Federal to Provincial and Local Government levels be effected through establishment of a Finance Commission of Yemen at the Federal level, which would be a Constitutional body, independent, have necessary expertise and be accountable to the Parliament (Box 11).

Box 11: COMPOSITION AND TERMS OF REFERENCE OF FINANCE COMMISSIONS

Composition

Federal Minister for Finance	Chair
Provincial Ministers for Finance	Members
Five representatives of Local Governments	Members
Renowned Public Finance Experts/Economists*	Chair
President Federation of Chamber of Commerce & Industry	Member
Two representative of the Council of Elders/Tribal Leaders	Member
Federal Secretary/Head of Ministry of Finance	Member/Secretary

Terms of Reference

The Finance Commission of Yemen will make recommendations to the Federal Parliament as regards:

- The vertical and horizontal distribution between the Federation, the Provinces and the Local Governments, of the net proceeds of the Yemen National Revenue Fund
- The making of grants-in-aid by the Federal Government to the Provincial and Local Governments
- Review the implementation of the Award made by the Commission
- The exercise by the Federal, Provincial and Local Governments of the borrowing powers conferred on them
- Any other matter relating to finance referred to the Commission by the Federal Parliament.

**Two each nominated by the Federal Government and Provincial Government, At least one of these must be female*

- j. ***Equitable and Rules Based Fiscal Distribution*** We propose that the fiscal distribution be transparent, predictable, equitable and relatively simple to administer. The mechanism would thus have to be one that :
- i. ***Addresses fiscal needs*** We propose that this be achieved by using the following criteria:
- Inverse income distribution As a measure of disparities in income across the country.
 - Inverse population density: This enables variation in cost of service delivery to be adjusted into the distribution of finances.
 - Deprivation Index This provides a measure of need by evaluating a range of socio-economic indicators. We propose to use a few key indicators including: % of population with access to clean drinking water; % of Maternal Mortality Rate; % of Infant Mortality Rate; % of Net Enrolment Rate; electricity consumption or % of population with access to electricity
- ii. ***Rewards fiscal effort and fiscal efficiency*** This can be achieved by incentivising improvements made by constituent units relating to:
- Growth in Own Source Revenue (OSR) as a % of Total Revenues. For this, the average OSR over a 5 year period would be used as the baseline. The base year from which point onwards the baseline is developed would be agreed between the constituent units.
 - Development of a Fiscal Effort Index which allows for comparison across the country with respect to the revenues actually generated by constituent units with revenues that could have been generated calculated on the basis of fiscal capacity. Some of the more well-known measures for fiscal capacity are the Representative Tax System (RTS)⁷⁷ and its subsequent variant, the Representative Revenue System (which basically expanded the tax base used for calculating the RTS and adding non-tax revenue bases used by subnational governments).
 - Improving fiscal marksmanship By measuring improvements in closing the gaps between the budgetary allocations and budgetary expenditures, fiscal and budgetary discipline could be monitored and rewarded.

⁷⁷ Developed in 1962 by the Advisory Commission on Intergovernmental Relations (ACIR) in the US, to serve as a method for equalizing the distribution of federal funds. The system is a series of mathematical steps using 27 tax bases to measure fiscal capacity, leading to a national average tax system.

- k. ***Provides for an equalisation mechanism*** This would take the form of an equalisation grant, which are unconditional, general purpose transfers intended to equalise fiscal conditions among constituent units. There are a variety of ways in which this equalisation method can be arrived at, but for illustrative purposes, we demonstrate the following, simple one and two-window models⁷⁸ for developing an equalisation grant:

<p>Basic Mechanism: One Window</p> $\text{Transfer}_i = (x_i / X) \cdot \text{Fund}$ <p>where $X = \sum x_i$</p> <ul style="list-style-type: none"> ▪ x could be population ▪ x could be gap between “needs” and “capacity” 	<p>Equalization Using Two Windows</p> $\text{Transfer}_i = (x_i^1 / X^1) \cdot a^1 \cdot \text{Fund} + (x_i^2 / X^2) \cdot a^2 \cdot \text{Fund}$ <p>where $a^1 + a^2 = 1$</p> <ul style="list-style-type: none"> ▪ Divide fund between the windows ▪ Use each window for a different equalization purpose
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- l. ***Empowering Provinces and Local Governments to Raise Loans*** We propose that the Constitution grant the Federal, Provincial and Local Governments the right to raise commercial loans, locally and internationally, against their respective consolidated funds (National Revenue Fund, Provincial Revenue Fund and Local Revenue Fund respectively), and using instruments such as Municipal Bonds⁷⁹ or Social Impact Bonds⁸⁰. The Federal Government, who is responsible for management of the national public debt, would legislate on the conditions, limits and processes for borrowing by Provinces and Local Governments, including a prohibition for borrowing for financing of recurrent expenditures.
- m. ***Ensuring Fiscal Responsibility*** In order to ensure that the constituent units of the Federation are bound within limits of fiscal responsibility, we propose that the Federal Government legislate on the issue and a Fiscal Responsibility Act define the limits and measures of fiscal responsibility,

⁷⁸ Meaning that there are two transfers for equalization, each with a different objective and size. For more information on this, refer the works of Jorge Martinez-Vazquez.

⁷⁹ A municipal bond is a bond issued by a local government, or their agencies. Municipal bonds may be general obligations of the issuer or secured by specified revenues.

⁸⁰ This is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings.

including but not limited to: capping budgetary deficits and reducing the public debt to GDP ratio (usually 60%); defining *ways and means* limits with the Central Bank; protecting minimum pro-poor investments as a % of GDP (usually 4%); and limiting issuance of sovereign guarantees to a maximum of 2% of GDP.

- n. ***Enhancement in Financial Powers*** Along with expenditure and revenue assignments and relevant fiscal autonomy, it is important for the constituent units have enhanced financial powers, including the full powers of approving financial plans, budgets, projects and investments in subjects under their exclusive jurisdiction i.e. other than the subjects enumerated under the Federal, Provincial and Local Government Legislative List and the Concurrent List. In other words, for subjects in their exclusive jurisdiction, the constituent units (Provinces) need not refer anything to the Federal Government. In the case of the subjects under the Concurrent List, the division of financial powers would be determined through Intergovernmental Agreements on Fiscal and Financial Relations (IGAFR), which would clearly spell out the triggers for reference to the Federal Government by Provincial and Local Governments in relation to approval of plans and budgets etc. For example, when Federal Government equity in a joint program exceeds a third of the total equity, approval of the program funding would be done at the Federal level. Moreover, the IGAFR would also detail the institutional arrangements for this purpose and the mechanism for resolution of any dispute that may arise between the Federal, Provincial and Local Governments. All three tiers of Government would have full powers in relation to the approval of budgets and annual plans falling under their exclusive jurisdictions (as defined under the legislative lists). In cases of concurrent subjects or subjects where the constituent units and the Federation agree upon co-financing, projects of national strategic importance and in relation to the various funds (Social Development Fund, Cleaning Fund, Youth Fund, Agriculture Fund etc.), as well as any vertical programs which either the Federal Government plans to launch in a province or a local government or a Provincial Government in a Local Government, the launch of such vertical program would be subject to approval in the respective legislatures by a two-third majority. These strategic, vertical or Funds-driven programs would be implemented under an Intergovernmental Agreement which would clearly specify the roles, responsibilities, outputs and outcomes, as well as the financial flows and contributions by each party.

- o. ***Institutional arrangements for revenue collection*** We propose that while the Constitution should provide for establishment of independent revenue authorities in every Province, it may provide for the Federal Tax Authority to perform agency functions for the Provinces—or Local Governments where requested—as regards revenue collection, till such time as the Provinces or the Local Governments establish their own Revenue Authorities or build institutional capacity to perform the collection function themselves. This could form part of the IGAFR mentioned above and the Federal Tax Authority would charge an agency commission (to be negotiated with the Provinces but usually around 15%) to cover for administrative costs with the possibility of an incentive clause that would reward the Authority for collections over a 3 year average for the Province.
- p. ***Localize Zakat*** We propose that *Zakat* be localised in the sense that every tier of Government collects and retains *Zakat* at their respective levels, with no pooling of *Zakat* at any higher tier. Furthermore, we propose that the levy of *Zakat* on private and non-profit organisations (Trusts, Charities, NGOs etc.) that have more than one office or branches in the country, should be made at the location of each of its offices, branches or operations and not at the Head Office level only; this would allow *Zakat* collections to benefit the areas where the operations of organisations is taking place.

43. ***Justification:*** The justifications provided in detail under Option 2 for the proposed fiscal autonomy apply to Option 3 as well, with the additional justification that the proposal for providing local governments with some buoyant taxes such as Immovable Property Tax and for empowering Local Governments to borrow, including using commercial paper or instruments such as Municipal and Social Impact Bonds, are meant to enable them to be increasingly less reliant on fiscal transfers. Particularly for urban local governments, these could provide the fillip needed to kick-start infrastructure development in cities, as well as to allow for meeting O&M costs.

44. At the same time, it is important to realise that in most Federal countries, the Provinces have limited fiscal space, owing to the most buoyant taxes such as personal income tax and export duties being federalised. We have therefore proposed to shift a number of taxes, most importantly the Urban Immovable Property Tax, to the Provinces to provide the fiscal fillip they would require in order to fulfil their mandates. Also, our proposal

to place a wedge between oil revenues and constituent units and our proposal to include incentives for improving OSR as a % of total revenues means that Provinces would have to substantially improve fiscal effort. At present, the revenue composition is far too lopsided to allow for any meaningful planning at subnational levels.

INTERGOVERNMENTAL RELATIONS

45. **Proposal:** In addition to the proposals made under Option 2, we propose the following for Option 3 as additions or amendments:

- a. **Creation of a number of Constitutional forums** for intergovernmental relations These would include:
 - Council for Intra-Provincial Cohesion and Coordination to serve as the principal forum for intergovernmental coordination, cooperation and dispute resolution between Provincial and Local Government Levels (Box 12).

BOX 12: COMPOSITION AND TOR OF COUNCIL FOR INTRA-PROVINCIAL COHESION AND COORDINATION

Composition*

10. Chief Minister of Province	Chairperson
11. Five representatives of District Mayors	Members
12. Representative of Leader of the Opposition in the Provincial Senate	Member
13. Senior Provincial Cabinet Minister	Member
14. Representative of the Council of Elders/Traditional Leaders	Members
15. Provincial Minister for Intergovernmental Relations	Member/Secretary

**The Council may co-opt members as per need.*

TOR

- The Council shall be responsible to Parliament and shall submit and publish an Annual Report
- The Council shall formulate and regulate policies in relation to matters enumerated in the Legislative Lists and shall exercise supervision and control over related institutions.
- The Council shall be constituted within thirty days of the Chief Minister taking oath of office.
- The Council shall have a permanent Secretariat and shall meet at least once in ninety days. The Chief Minister may convene a meeting on the request of a Province on an urgent matter.
- The decisions of the Council shall be expressed in terms of the opinion of the majority.
- Parliament will frame rules of procedure for the Council.
- Parliament, in joint sitting, may from time to time by resolution issue directions through the Provincial Government to the Council generally or in a particular matter to take action as Parliament may deem just and proper and such directions shall be binding on the Council.
- The Council will resolve disputes between and among the Federation and the constituent units.

- Establishment of Inter-Sectoral, Inter-Ministerial Forums In order to improve coordination, sharing of information, knowledge and experiences, the Constitution may provide for Ministerial forums organised along thematic lines (Box 15).

BOX 15: SAMPLE COMPOSITION AND TOR FOR INTER-MINISTERIAL FORUMS

Thematic Areas

The sectors for which this forum could be established include:

- Public Finance Management;
- Natural Resource Management;
- e-Government;
- Energy;
- Climate Change;
- Urban Development;
- Population Welfare;
- Youth and Gender issues
- Trade
- Food Security
- Water Resource Management

Composition*

- | | |
|--|----------|
| 5. Federal Minister for relevant sector | Chairman |
| 6. Federal Minister for Planning | Member |
| 7. Provincial Ministers for Planning | Members |
| 8. Provincial Ministers of relevant sector | Members |
| 16. CEOs of relevant State Owned Enterprises or Funds | Members |
| 17. Federal Secretary, Ministry of Intergovernmental Relations | Members |

**The forum may co-opt members as per need.*

Key Functions

15. Setting up of voluntary National Standards (Qualitative as well as Quantitative) for sectoral inputs, processes and outcomes.
16. Ensuring sectoral and geographic consistency in key interventions.
17. Undertaking special, facilitative measures for less developed Provinces.
18. Confidence building and issue(s) resolution between the Federal Government and the Provincial Governments,
19. Facilitating the process for refining the roles and responsibilities of different tiers of Government within the framework of the Constitution and send its recommendations to the relevant authorities.
20. Providing a forum for Inter-Provincial experience sharing and learning.
21. Provide broad direction to the public debate/media interventions regarding educational issues.

- b. ***Provide for framing of Intergovernmental Relations Agreements*** These could be developed for various sectors (we mentioned the Intergovernmental Agreement for Fiscal and Financial Relations earlier), and help regulate the relations between the Federal and Provincial Governments by defining the purpose, process and plans for policy cohesion, consistency and coordination, while protecting autonomy. We propose this as an important instrument for cooperative Federalism. Disputes arising from the content, its interpretation or implementation could be placed before the Council for National Cohesion.
- c. ***Establishing Key Constitutional Bodies and Offices*** We propose that the following institutions be Constitutional bodies or Offices (positions):
- Constitutional Supreme Court
 - General Supreme Court
 - Supreme Judicial Council
 - Election Commission of Yemen
 - Planning Commission of Yemen
 - National Economic Council of Yemen
 - National Human Rights Commission of Yemen
 - COCA and its Chairperson
 - SNACC and its Chairperson
 - Controller General of Accounts
 - Public Service Commission of Yemen
 - University Grants Commission of Yemen
 - Governor of the Central Bank of Yemen
 - Federal Ombudsman
 - Finance Commission of Yemen
 - Finance Commission of Provinces
 - Council of National Cohesion
 - Council of Elders/Traditional Leaders
- d. ***Other Measures for Improving Intergovernmental Relations*** With a view to promote trust and assist State Building and Peace Building Efforts, we propose the following measures:
- Current efforts to establish the Transitional Justice institutions, including the Commission of Inquiry and Commission for Reconciliation and Justice be

expedited. This will provide space for a national process for healing the wounds inflicted by prolonged conflict and sense of deprivation.

- Putting in place an Affirmative Action provision in the Constitution for citizens of the backward, underdeveloped regions; women; minorities; and the disabled in the form of quotas in Parliaments and Local Councils, employment in the civil service and the armed forces; and judiciary.
- Establishing Intergovernmental Relations Departments at Federal and Provincial levels, to serve as the administrative arm for coordination. The Terms of Reference are in Appendix 14.
- Establishment of Sectoral Parliamentary Caucus which would allow the Standing, Special, Select and other Parliamentary Committees formed at the Federal and Provincial Levels and the Local Government Sector Committees to interact with each other on a regular basis. The organisation of the Caucus could be thematic, with, for example, a Health Parliamentary Caucus, an Economic Development Parliamentary Caucus. The Intergovernmental Relations Departments proposed above would provide the logistic and technical support needed for the Caucus.

46. ***Justification:*** All other justifications regarding the proposals for intergovernmental relations under Option 2 hold for Option 3, with the additional justification that the proposal to establish an Intra Province forum for coordination is to iron out issues between Provinces and Local Governments first at this level, and in the event of disagreement or dissatisfaction, escalate the issue to the Federal level. This is intended to strengthen the operational relationship between Provinces and Local Governments and to prevent an adversarial relationship being developed between the two orders of government.

CIVIL SERVICE STRUCTURE

47. **Proposal:** Our proposals for the structure of the civil service, as contained in Option 2, also hold under Option 3, with the following additional proposals:

- a. For an independent, merit-based recruitment system for civil servants, we propose the **establishment of the Local Service Commission** as independent, Constitutional bodies that will manage the recruitment of civil servants under the Local Service Cadres, employing a transparent, merit-based process/
- b. **Establishment of a Local Service Cadre** In sync with the Federal and Provincial civil service structures proposed, we advocate that a Local Service Cadre be established. This would comprise the following (this list is not exhaustive):
 - Municipal Engineers and Overseers
 - Town Planners
 - Rural Development Specialists
 - Urban Development Specialists
 - Water Supply and Sanitation Supervisors
 - Sanitary Workers
 - Local Finance Specialists
 - Local Government Support Staff
 - Local Government Ministerial Staff
 - Public Health Specialists
- c. **Encadrement of positions** We propose that in order to create a viable Local Service Cadre, certain positions within Local Governments be encadred as Local Service positions i.e. on which only Local Service officers can be posted. As per international practice, overwhelming majority of these would be at the non-gazetted levels, so as to create employment opportunities at the local level.

However, given that the recruitment pool at local levels across the country is variable, we also propose that some flexibility be provided by allowing Local Governments to hire from outside of the Local Service pool of officers.

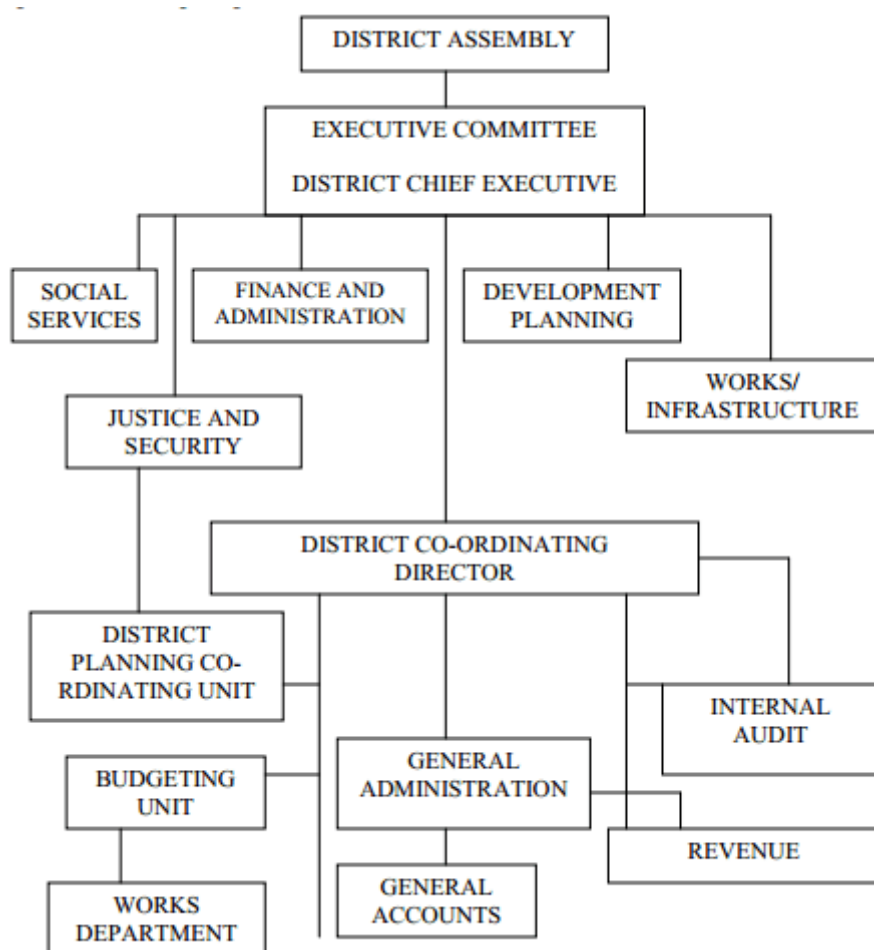
- d. ***Extending the coverage of a Fast Track Stream to Local Service Cadre*** To provide civil servants with an opportunity to fast track their professional advancement, based on skills, experience and expertise acquired in specialised areas, we propose that a Fast Track Stream be created within the Federal Civil Service structure. This Stream would be filled through open recruitment, meaning that civil servants—Federal, Provincial and local—and non-civil civil servants (i.e. any citizen of Yemen) would be eligible to apply based on criterion to be advertised for each position. The Public Service Commission of Yemen would be responsible for recruitment against vacancies under the Fast Track Stream and the process would be through open competition, with all positions advertised. Because these are specialist positions requiring specific expertise, the Terms and Conditions of the Fast Track Stream would be better than regular civil servant positions. The following positions are presented here as indicative of the positions in the Fast Track Stream:

- i. Commercial, Economic and Trade Counsellors in Yemen's Foreign Missions.
- ii. Positions in the WTO and specific UN Committees and Organisations (e.g. UNDESA)
- iii. Chief Economist of the Planning Commission of Yemen
- iv. Chief Economist of the Provincial Planning Commissions
- v. CEO positions in State Owned Enterprises, whether at Federal or Provincial level.

- e. ***Instituting an Affirmative Action Regime for the Local Service Cadre*** We propose the following institutional measures for putting in place an Affirmative Action regime in the civil service:

- i. Quotas for women: At least 10% of positions *at all* levels to be filled by female candidates.
- ii. Quotas for Candidates from under-represented and underdeveloped regions: 5%
- iii. Quotas for Minorities and Disabled: At least 2% of positions to be filled by candidates from minority communities and with disabilities.

- f. ***Local Government to have full Appointments, Posting, Promotion and Transfer Powers*** for all positions to be filled through the Local Service Cadre. The division of these powers between the Districts, Towns and Village Councils to be defined under an Act of Parliament. For gazetted positions in Local Governments, a sharing formula would be developed and followed, with 60% of managerial positions filled by Federal civil servants; 20% by Provincial civil servants and 20% by Local Service Cadre officials.
- g. ***Local Service Cadres positions would comprise transferable and non-transferable positions***, clearly identified under an Act of Parliament. Transferable positions would allow for inter and intra Local Government transfers, while non-transferable would be specific to a Local Government. The latter will likely be non-gazetted, administrative and support staff positions.
- h. ***Every District will have some common structures***, with the law providing for flexibility to accommodate specific situations, needs and plans. A sample district administration is shown below:



CHAPTER 6: RISKS AND THEIR MITIGATION

RISK ANALYSIS

1. Given the fragility of Yemen on several counts and the fractious political environment in which the debate on the future form of government is to take place, it would be amiss to state that the risks for Yemen are plenty and loom large. Nevertheless, the fact that the country is pulling its way through this difficult, uncertain times points to the resilience of its people and to the possibilities of a new beginning.

2. We have dealt with at length on the options and their relative benefits. Clearly, each of the three options we have presented comes laden with risks. In Option 1 we made a case for the possibility of morphing the existing model of Unitary State into a more enabling, empowering and accountable version that seeks to redress both the imbalances in terms of administrative and fiscal autonomy at central and local levels and the economic dirigisme. However, it suffers from the disproportionate political power which the centre possesses by virtue of its being the sole, recognised government. Powers, functions and responsibilities which the central government chooses to share with subnational levels—whether as a result of its own positive, enlightened intent, or due to pressures from local and regional stakeholders or as a political compromise—can be withdrawn unilaterally; essentially, subnational units act as agents of the central government. The enhanced autonomy under the model presented in Option 1 is also dependent on the will of the central government. While any intent or action to reverse autonomy granted to subnational levels will perhaps be subject to moral pressure and civil unrest, any withdrawal of powers, or interference into subnational level affairs or curtailing of powers will be on sound legal footing, remonstrations of citizens and subnational units notwithstanding. Even in its reformed and refined form, the Unitary State comes with the caveat emptor of subnational administrative units being creatures of the central government.

3. We noted under Options 2 and 3—Federal State with two-tiers and three-tiers of government respectively—that Federalism avoids this structural ‘flaw’ of the Unitary State. However, we need to introduce some caveats at this stage: Federalism is not, cannot, and should not be considered a panacea for all of Yemen’s ills. However, for reasons outlined in Options 2 and 3, it certainly presents a very strong institutional and political framework for setting right a large number of wrongs. Moreover, it is less likely to be a politically risky option than is a reformed Unitary State, primarily because it establishes an interest-base and

creates an institutional, legal space for co-existence of all actors, State and Non-State, political parties and civil society, citizens and communities. Again, it is important to underscore that a Federal model is as likely to fail as is a Unitary State or any other model for that matter; it is just that the likelihood of this happening in Yemen is less than would be under a Unitary State model, as dwelled on extensively in this paper. Indeed, evidence on Federalism as an independent variable for successfully resolving political conflicts is sketchy and there are some policy analysts who view Federalism as a means for entrenching, institutionalising and perpetuating conflicts⁸¹. In some ways, Federalism is a victim of its own existence: in seeking to embrace diversity and to allow for freedom of political and economic choices, it can entrench differences and create a wedge between national unity and the movements for separation. It also runs the risk of being overly complex, rigid and legalistic in content, not allowing for innovation or flexibility.

4. The second important aspect to bear in mind is that there are substantial variations in Federal structures around the world; there is no single, 'right' way of developing a Federal structure and there is no 'best practice' for the simple reason that like all solutions, bespoke is the way to go and context is king. There are, however examples of successful transitions from Unitary to Federal States from which one can learn and several considerations—such as economic disparities, unequal distribution of natural resources, nature and number of constituent groups, cultural values and geo-political factors to name a few⁸²—that need to be kept in mind while designing a Federal system.

5. Furthermore, global evidence points to a tendency for Federal Governments to encroach upon the policy and implementation space of subnational governments. There are several ways in which this is achieved, but one set of ways, termed as 'Howard centralism' after the former Australian Prime Minister, includes:

- excessive use of conditional funding;
- frequent bypassing of Provinces or States;
- regular overriding of Provinces or States;
- treating subnational governments as service deliverers rather than policy partners;
- introducing purchaser/provider models where subnational governments end up as just one of the bidders for Federal funding.

⁸¹ Simeon, R., *Preconditions and Pre-requisites: Can Anyone Make Federalism Work?*, Institute of Intergovernmental Relations, Queens University, 2007

⁸² Ibid

6. Of course, there are several others risks too and these have been identified and summarised in Table 1 and Table 2 respectively.

TABLE 1: FISCAL & PUBLIC FINANCE RISK SPECIFICATION

Exogenous to the State	Within the State Machinery	Policy Specific Risks
Poor economic performance of the country as a result of the global slowdown—this would impact the amount of central transfers to the subnational levels in the medium-term.	Insufficient capacity throughout all institutions, e.g., not only in terms of staffing of relevant units but also skilled staff members and those who have strong hands-on experience in such areas as revenue administration, tax administration	Risk of dispersion of economic functions (e.g., fragmentation of collection of tax and nontax revenues across various departments)
Central Government policy changes with respect to the subnational levels.	Risk of corruption, fraud, and mismanagement in the public sector, e.g., resulting from weak business processes	Gaps in any relevant rules and regulations that would weaken enforcement measures
Exposure to any international market risks	Weak internal accountability mechanisms in government agencies	State Owned Enterprise-related, including weaknesses in corporate governance arrangements, difficulties in closing unviable SOEs, potential proliferation in adjustment costs of closure of SOEs.
Extraneous events	Insufficient political commitment to continuing with reforming the armed forces, political structures and civil service (or even risk of policy reversal).	Lack of adherence to the merit principle in recruitment
		Reforms and processes may not be transparent to citizens, hence the risk of low buy-in
		Inability or unwillingness of subnational governments to generate greater resources to fund various social development programs

TABLE 2: RISK SEVERITY MATRIX

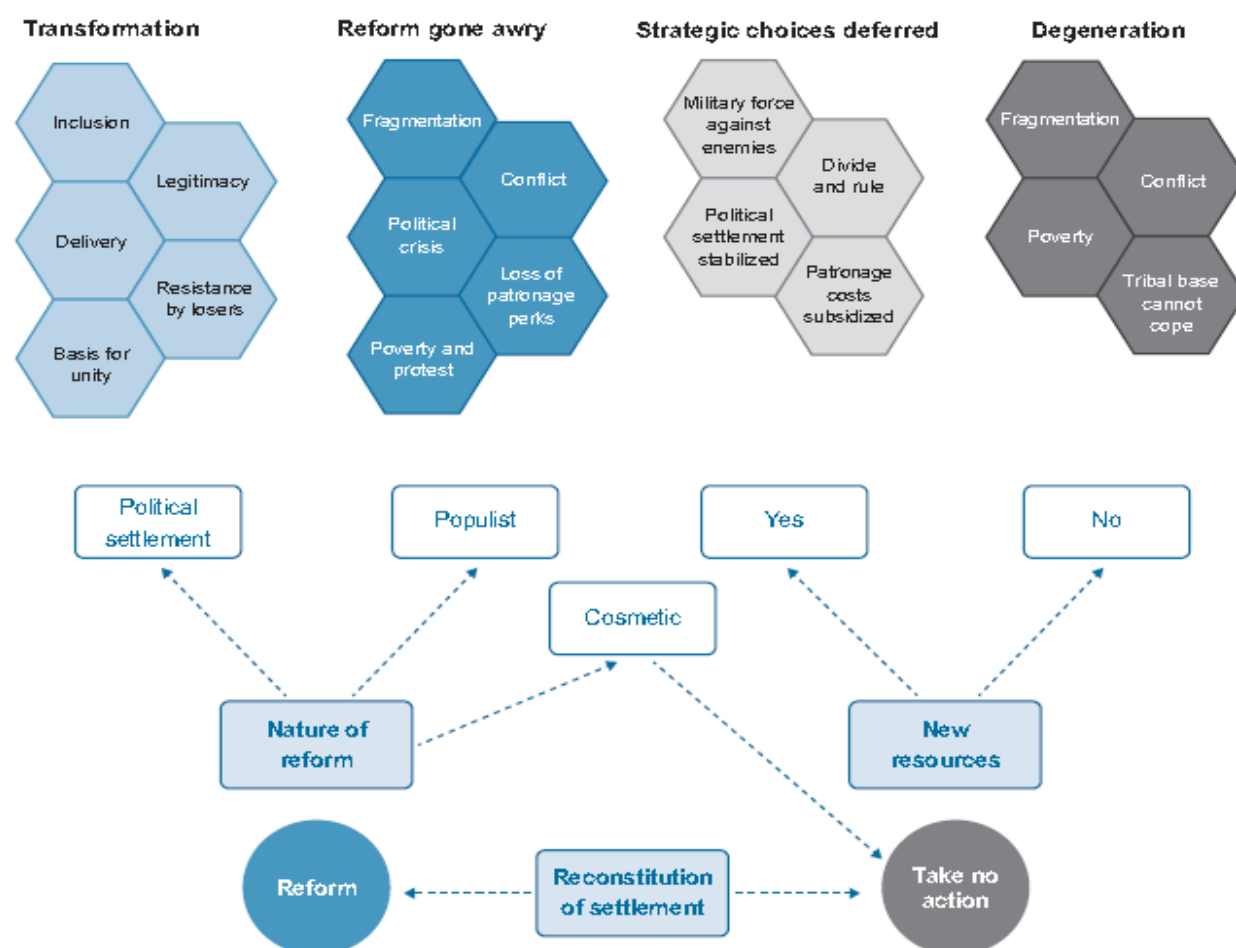
TABLE 2: RISK SEVERITY MATRIX						
		Impact (I)				
		5	4	3	2	1
		Very High	High	Moderate	Low	Very Low
Likelihood of event occurring (L)	5 Very likely	Type I <ul style="list-style-type: none"> Weak Local Authorities Absence of 'voice' for disadvantaged groups Implementation delays Weak political will 	<ul style="list-style-type: none"> Weak capacity of Ministry of Local Administration Inherent gender biases (and biases against disadvantaged groups) continue 	Type II <ul style="list-style-type: none"> Weak meso-level agencies as well as other associated institutions Weakness related to government business process, such as on procurement Weak Local Authority Law, and unclear mandates of local councils 		Type III
	4 Likely	<ul style="list-style-type: none"> Non-conducive political environment Funds not used for intended purposes 	<ul style="list-style-type: none"> Local Authorities not able to use capacity development funds well 	<ul style="list-style-type: none"> Absence of Local (Government) Service Act 		
	3 Moderately likely	<ul style="list-style-type: none"> Public expectations not managed properly 	<ul style="list-style-type: none"> Fiscal transfer formula may be weak 	<ul style="list-style-type: none"> No real transfer of powers to the local level 		Type IV
	2 Unlikely	<ul style="list-style-type: none"> Unsustainable funds transfer to LAs over time 	<ul style="list-style-type: none"> Little political will in LAs to reengineer processes Few grievance handling mechanisms at local level 			
	1 Rare					

Adapted from a framework developed by Dr. Gambhir Bhatta, Principal Knowledge Management Specialist, Asian Development Bank

7. In addition to the above mentioned, Yemen is home to a vast landscape of State Owned Enterprises (SOEs), a number of which are under the control of the army as part of the military economic complex, the rest are under the control of the bureaucracy and all of them are generally inefficient, causing a drain on public finances---the subsidies to the Public Electricity Corporation between FY2010-2011 alone are over YR14 billion—and very likely possibly crowding out private investment. Moreover, these SOEs serve as convenient vehicles for the omnipresent political patronage system that engulfs Yemen's formal and informal systems.

8. Several scenarios⁸³ have been drawn up for Yemen's future (Figure 1). The risk of failure of the National Dialogue hangs heavy over most of these. The hope of course is that, of these scenarios, the path chosen is that of transformation through political settlement.

Figure 1: Critical choices facing Yemen



⁸³ *Yemen: Scenarios and Indicators*, Chatham House, 2012

9. Even for the other risks---those related to capacities, voice, fiduciary management and governance---there are mitigating strategies available (Table 3), which can help Yemen ride this stormy period in her life as a nation.

TABLE3: RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
Weak Local Authorities (LAs)	<ul style="list-style-type: none"> • Increase in funds transfer in recent years • Capacity building interventions for Local Authorities 	<ul style="list-style-type: none"> • Assurances of resource increase from Government • Funding sought from development partners • Ring-fence funds for specific reforms • Strengthen training institutions involved in local governance and training • Dedicated capacity development grants for Local Authorities 	<ul style="list-style-type: none"> • Management of expectations, and problems with continuance of reforms if Government cannot sustain the resource increase • Ring-fencing of resources could lead to adverse reforms
Weak capacity of MOLA to manage/implement the reforms	<ul style="list-style-type: none"> • General awareness in MOLA itself about this gap • Leadership committed to addressing the issue • Development partners have agreed to support the MOLA in program management 	<ul style="list-style-type: none"> • Increase in dedicated and targeted Technical Assistance to MOLA • Better linkages between the MOLA and Local Authorities s needed (particularly for purposes of putting the program on an even keel) 	<ul style="list-style-type: none"> • Current interest in strengthening MOLA might wane over time (as a result of, say, a change in the leadership, or as a result of lack of immediate success in the program thus leading to wariness at MOLA
Absence of 'voice' for disadvantaged groups	<ul style="list-style-type: none"> • Strong media, and general public awareness, has begun to shift the situation a bit • Specific civil society organisations and other groups quite active in some areas of the country 	<ul style="list-style-type: none"> • Holistic and targeted social mobilization • Support the groups financially • Monitor and stay engaged with them • Monitor the work of Local Authorities • Make 'voice' opportunities simple to access 	<ul style="list-style-type: none"> • There is a risk that Local Authorities will not be able to adequately deal with the 'voice' process, thus leading to frustration on the part of disadvantaged groups about what they might expect from the new government structure
Inherent gender bias (and bias against disadvantaged groups) continues	<ul style="list-style-type: none"> • Greater awareness of need for gender empowerment in government processes and activities • Constitutional and policy backing for a new policy 	<ul style="list-style-type: none"> • Strengthen gender empowermentl arrangements in: (i) program framework, (ii) Local Authorities, (iii) in local development processes • Monitor program with specific reference to inclusiveness 	<ul style="list-style-type: none"> • Lack of resources down the road, and a waning of interest from policymakers at the centre and officials at the local level, is possible, thus jeopardizing the program
Implementation delays	<ul style="list-style-type: none"> • General awareness that a problem exists • Application of new rules, such as on procurement 	<ul style="list-style-type: none"> • Strong focus on capacity building in the relevant institutions • Streamlining work processes both at the centre and at the local level 	<ul style="list-style-type: none"> • Undue influences from outside sources (such as political parties) might cause delays to continue
Citizens lack access to information on government functioning and decision making systems	<ul style="list-style-type: none"> • Media active in reporting mismanagement in Local Authorities • NGOs involved in information gathering and dissemination as well • Use of citizens' charter, etc., to remind service users about having 'voice' 	<ul style="list-style-type: none"> • More effective grievance redress mechanisms in line agencies • Aggressively monitor the performance of Local Authorities with respect to transparency • Include accountability and transparency measures and indicators in the program framework 	<ul style="list-style-type: none"> • Continued biases (against both gender and disadvantaged groups) could inhibit involvement in local governance, thus further aggravating the problem of lack of engagement that is the primary cause of the current predicament
Weak meso-level and associated bodies	<ul style="list-style-type: none"> • Development partners providing some support to these bodies • Government aware that these bodies need to be strengthened 	<ul style="list-style-type: none"> • Include the roles of these bodies in program management • Provide capacity building support to these bodies as well in the program 	<ul style="list-style-type: none"> • Resources set aside for these bodies may not be adequate to make meaningful impact on their capability • Broader political motives of these bodies will jeopardize the success of the program
Public expectations not managed properly	<ul style="list-style-type: none"> • An extensive process of consultation and participation in design has already taken place 	<ul style="list-style-type: none"> • Ensure that there is continued dialogue between civil society and Local Authorities on what the program can deliver 	<ul style="list-style-type: none"> • The Government may want to continue to set expectations high (for political purposes), thus undermining the effectiveness of

TABLE3: RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
		<ul style="list-style-type: none"> Engage with local level political leaders on setting– and managing– expectations Set very realistic, and achievable, goals 	the program
Weaknesses on government business processes, such as on procurement	<ul style="list-style-type: none"> Training on procurement regulations and guidelines 	<ul style="list-style-type: none"> Continue to monitor aggressively the financial and procedural arrangements of the Procurement Act 	<ul style="list-style-type: none"> Transaction costs could undermine the appeal of the new Act and its regulations Opposition from the construction industry could also undermine the utility of the current provisions
Weak Local Authority Law	<ul style="list-style-type: none"> Review on-going of contradictory Acts with Local Authority Law 	<ul style="list-style-type: none"> Need to table the amendments at the earliest so that the Act can be strengthened with respect to greater clarity of powers and authorities of Local Authorities 	<ul style="list-style-type: none"> Even the amendments currently proposed may not accurately reflect the changed situation on the ground (this would further entrench rigidities in the system)
Absence of Local (Government) Service Act	<ul style="list-style-type: none"> Policy paper has outlined the changes required in the Act 	<ul style="list-style-type: none"> Ensure that consultations continue aggressively and that a draft is presented to the Parliament at the earliest 	<ul style="list-style-type: none"> Opposition from the central level bureaucracy might derail the Act or water down its provisions
No real transfer of powers to the local level	---	<ul style="list-style-type: none"> Amend, and strengthen, Local Authority Law Engage political leaders at the centre 	<ul style="list-style-type: none"> Residual opposition to transferring power to the local level among civil servants at the centre
Local Authorities not able to use capacity development funds	<ul style="list-style-type: none"> Assistance being provided to develop their absorptive capacity 	<ul style="list-style-type: none"> Target specific areas in Local Authorities that require urgent attention 	<ul style="list-style-type: none"> Funds meant for capacity development might be used for other (non-productive) purposes
Little political will to reengineer processes	<ul style="list-style-type: none"> Considerable political pressure for Local Authorities to do things differently 	<ul style="list-style-type: none"> Engage political leaders at the local level Provide adequate resources to Local Authorities to ensure that any such reengineering will not be cost prohibitive Provide opportunities for Local Authority officials to be aware of possibilities of reengineering by seeing successful instances 	<ul style="list-style-type: none"> Possibility of some Local Authorities that will not be able to successfully reengineer processes
Non-conducive political environment	<ul style="list-style-type: none"> All political parties interested in strengthening Local Authorities Move towards a federal state is not likely to be watered down, or reversed 	<ul style="list-style-type: none"> Engage senior-most ranks of the civil service on the national program Liaise with political parties at the local level 	<ul style="list-style-type: none"> Uncertainty as to the specific nature of a federal government could undermine the program
Few grievance redress mechanisms in Local Authorities	<ul style="list-style-type: none"> Accountability mechanisms such as public/social audits, citizen charters, etc. have been piloted in selected areas Local media and community organizations have stayed active 	<ul style="list-style-type: none"> Line ministries with field-based operations to develop plans to improve service delivery and accountability mechanisms Local Authorities to formalize accountability mechanisms, bolstered by monitoring of these measures on a regular basis by external parties 	<ul style="list-style-type: none"> Adequate resources not allocated for effective use of grievance redress mechanisms Local Authority officials could push back in the face of strong (and what may be perceived as rigorous) accountability measures, thus stalling transparency and accountability
Unsustainable funds transfer to LAs	<ul style="list-style-type: none"> Government has requested development partners to fund resource gap Budgetary provisions made by central government 	<ul style="list-style-type: none"> Encourage Local Authorities s to focus more on own-source revenues Continue to stay engaged with development partners to ensure fund flow for the long haul 	<ul style="list-style-type: none"> Redirecting the subsidy program at the centre to make more resources available would have political consequences
Fiscal transfer formula may be weak	<ul style="list-style-type: none"> This policy paper provides recommendations on how to make formula more scientific 	<ul style="list-style-type: none"> Continue to stay engaged with Local Authorities on how the formula evolves 	<ul style="list-style-type: none"> Implementation arrangements for formula may be complex, adding costs to its application

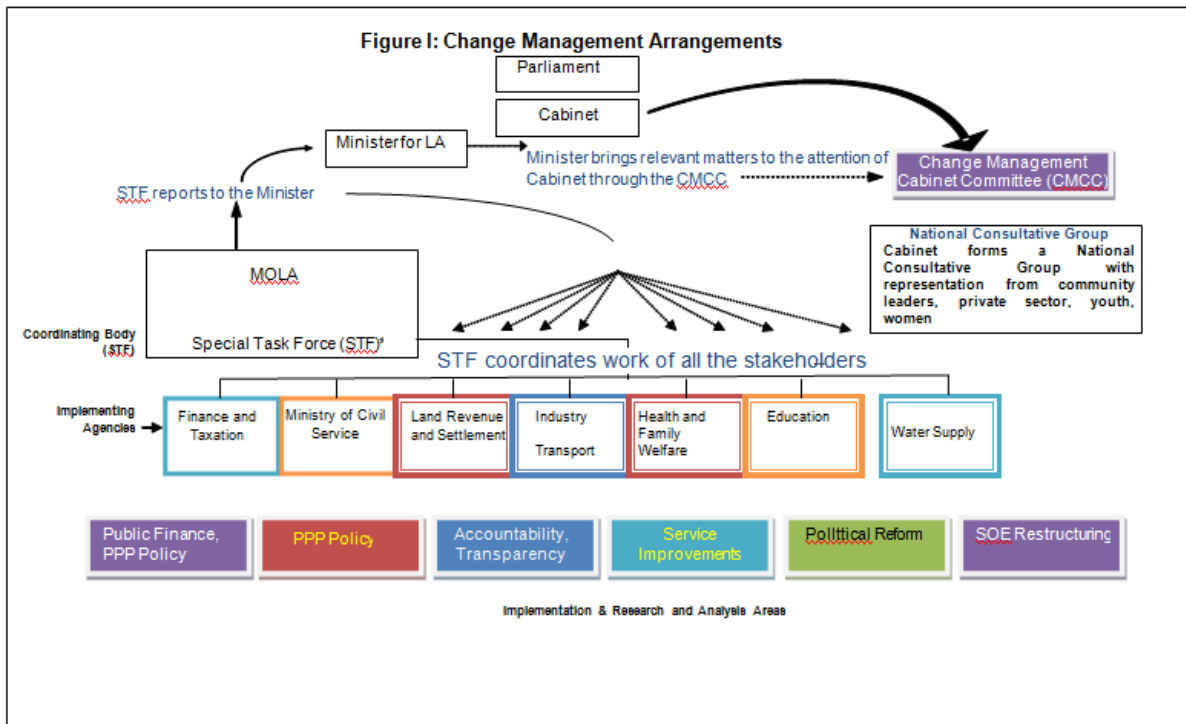
TABLE3: RISK MITIGATION STRATEGIES			
Risk Specification	On-going Mitigation Measures	Proposed Mitigation Measures	Residual Risks, if any
Expenditures of funds not for purposes intended	<ul style="list-style-type: none"> Minimized MOLA role in funds transfer, thus of leakages New financial transparency rules in place 	<ul style="list-style-type: none"> Ring-fencing arrangements for LPCs and social and environmental safeguards Involve civil society and outsiders in the M&E 	<ul style="list-style-type: none"> Assurances may still not be adhered to by Government Transactions costs could increase in expanded M&E activities

CHAPTER 7: CHANGE MANAGEMENT

CHANGE MANAGEMENT

1. Moving towards a new form of government requires clear roadmaps, actionable strategies and measurable performance and progress milestones to enable achievement of stated objectives and consequential impact on the nature and extent of service provision. This prolonged transition phase of change, coupled with a lingering scepticism within certain stakeholders over the likelihood of change and the endogenous and exogenous risks posed by externalities to the process, require a strong change management process. Indeed, the path towards a better, more secure, just and economically beneficial future for Yemenis is strewn with all manner of challenges.

2. In order to achieve a smooth implementation for putting in place whichever option the National Dialogue chooses as the new form of Government and decentralisation in Yemen, we propose that the Parliament assume stewardship of the process, with the Cabinet forming a Change Management Cabinet Committee (CMCC) and a National Consultative Group, holding regular briefings and MOLA providing the institutional support for implementing the change program (Figure 1):



3. In addition, we propose that the following schedule be developed for implementing the change plan (Table 1) over a relatively short period of 2 years. We propose this in the wake of the prolonged transition period through which citizens have already passed and in some ways, continue to experience. Moreover, while this time period is very challenging and may in fact border on the unrealistic, it has been proposed with a view to emphasise the need for urgency, including for accomplishing the basic tasks of framing the Constitution, undertaking a review of the laws and subordinate legislation, constitution and operationalisation of various committees to perform analysis and prepare plans for implementation of the new structure of government etc.

4. Experience from other countries, such as Pakistan, shows that it is indeed possible to meet the deadlines of such challenging time frames, provided support from all stakeholders, including development partners, is forthcoming. In Pakistan, the UNDP supported a Good Governance Group, and other partners supported the work of the National Reforms Bureau through technical assistance, leading to the implementation of the Devolution Reforms of 2000. More recently, the UNDP has developed a mid-term program for supporting the Federal and Provincial Governments to implement the 18th Amendment to the Constitution of Pakistan, which has been a game-changer in terms of the devolution of powers from Federal to provincial and local levels. Similar support could assist the Government of Yemen in meeting this proposed 2 year deadline.

TABLE 1: SCHEDULE OF IMPLEMENTATION OF CHANGE MANAGEMENT PLAN				
ACTIVITY	RESPONSIBILITY	2013	2014	215
Preparatory Activities				
Establish the Change Management Steering Committee	Cabinet			
Establish the Special Task Force	Cabinet			
Establish Thematic Working Groups	Cabinet			
Develop a Workplan with deadlines, budgets and responsibilities clearly defined	CMSC			
Policy Research and Analysis				
Comparative studies, thematic reports, policy briefs, guidelines, practice notes, strategy papers prepared	STF and Thematic Work Groups			
Conferences, meetings, workshops arranged	STF and Thematic Work Groups			
Communication and Advocacy				
Regular meetings and briefings of the CMSC, STF and the Cabinet	CMSC, STF, Cabinet and Thematic Work Groups			
Develop a communication and advocacy strategy	CMSC, Ministry of Media			
Launch a public awareness and outreach campaign	CMSC, Ministry of Media			
Establishment and operationalisation of Knowledge Management Forum and Policy Dialogue Forum	CMSC and STF			
Reporting and Accountability				
Quarterly reports by the STF and CMSC to Parliament	CMSC, STF			
Review of laws, standards, systems, practices and procedures of regulatory	Ministry of Law			

and oversight institutions reviewed, amended or in consultation with all relevant stakeholders				
Facilitate initiatives for open government	Ministry of Media, President's Office, Ministry of Finance			
Finalisation of Outputs				
Changes in law effected and new civil service structure put in place	Ministry of Civil Service; Ministry of Law			
CMSC and STF present their final reports and recommendations to Cabinet and Parliament	CMSC and STF			

THE COSTS OF CHANGE

- Each of the options proposed clearly has cost implications. While it is very difficult to estimate the exact cost of change, we have tried our best to identify some of the key cost components (see below) and attempted a rudimentary estimation of the cost of instituting provincial governments (Appendix 16). We must raise a note of caution here that these are basic estimates and do not represent any detailed analysis or meant to be illustrative only.

INDICATIVE COMPONENTS OF COSTS OF THE OPTIONS										
Component of Cost	Nature of Cost									
	Capital					Recurrent				
	HR	CB	IT	I&E	CA&O	HR	CB	IT	I&E	CA&O
OPTION 1: REFORMING THE UNITARY STATE										
Legal Reform Costs										
Making the legal framework consistent	X	X			X	X	X			C
Amending the Constitution	X	X			X					X
Institutional Reform Costs										
Establishing the independent National Finance Committee	X	X	X	X	X	X	X	X	X	X
Establishing the Local Authorities Commission	X	X	X	X	X	X	X	X	X	X
Enhancing powers of Local Councils		X	X		X		X	X		X
Enhanced monitoring costs	X	X	X	X	X	X	X	X	X	X
Elections and Electoral Reforms										
Amending the electoral system to elect Mayors directly	X	X	X		X	X	X	X	X	X
Fiscal and Financial Reforms Costs										
Enhancement of the financial powers of Local Councils	X	X	X	X	X	X	X	X	X	X
OPTION 2: FEDERAL STATE WITH TWO LEVELS (FEDERAL AND PROVINCIAL)										
Legal Reform Costs										
Developing the Constitution	X	X	X	X	X					X
Review and amendment of the existing laws to conform with the Constitution	X	X	X	X	X		X			X
Development of subordinate legislation (rules, regulations)	X	X	X	X	X		X			X
Institutional Reform Costs										
Establishing the Federal State, including Federal and Provincial Governments and the Constitutional bodies	X	X	X	X	X	X	X	X	X	X
Establishing the two types of civil service	X	X	X	X	X	X	X	X	X	X
Establishment of Task Forces & Committees for implementing the Constitution and the Federal structure, including the Change Management Cabinet Committee and the Special Task Force under MOLA	X	X	X	X	X	X	X	X	X	X
Demarcation costs	X	X	X	X	X	X	X	X	X	X
Administrative Reform Costs										

Initial reassignment of civil servants into Federal and Provincial civil services	X	X	X	X	X					
Revision of civil service manuals, appointment, posting and transfer policies, procedures and systems	X	X	X	X	X	X	X	X	X	X
Implementing quota systems	X	X	X	X	X	X	X	X	X	X
Elections and Electoral Reforms										
Amending the electoral system in line with new structure and its implementation	X	X	X	X	X	X	X	X	X	X
Fiscal and Financial Reforms Costs										
Revenue generation costs	X	X	X	X	X	X	X	X	X	X
Implementation of the 50-50-50 Plan	X	X	X	X	X	X	X	X	X	X
Implementing the devolved taxes	X	X	X	X	X	X	X	X	X	X
OPTION 3: FEDERAL STATE WITH THREE LEVELS (FEDERAL, PROVINCIAL AND LOCAL)										
Legal Reform Costs										
Developing the Constitution	X	X	X	X	X					X
Review and amendment of the existing laws to conform with the Constitution	X	X	X	X	X		X			X
Development of subordinate legislation (rules, regulations)	X	X	X	X	X		X			X
Institutional Reform Costs										
Establishing the Federal State, including Federal, Provincial and Local Governments and the Constitutional bodies	X	X	X	X	X	X	X	X	X	X
Establishing the three types of civil service	X	X	X	X	X	X	X	X	X	X
Establishment of Task Forces & Committees for implementing the Constitution and the Federal structure, including the Change Management Cabinet Committee and the Special Task Force under MOLA	X	X	X	X	X	X	X	X	X	X
Demarcation costs	X	X	X	X	X	X	X	X	X	X
Administrative Reform Costs										
Initial reassignment of civil servants into Federal, Provincial and Local civil services	X	X	X	X	X					
Revision of civil service manuals, appointment, posting and transfer policies, procedures and systems	X	X	X	X	X	X	X	X	X	X
Implementing quota systems	X	X	X	X	X	X	X	X	X	X
Elections and Electoral Reforms										
Amending the electoral system in line with new structure and its implementation	X	X	X	X	X	X	X	X	X	X
Fiscal and Financial Reforms Costs										
Revenue generation costs	X	X	X	X	X	X	X	X	X	X
Implementation of the 50-50-50 Plan	X	X	X	X	X	X	X	X	X	X
Implementing the devolved taxes	X	X	X	X	X	X	X	X	X	X

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APPENDIX 2: TERMS OF REFERENCE FOR RAPID ASSESSMENT SURVEY ON DECENTRALIZATION

I. Objectives

- a. To assess the perception of local level officials on the nature and extent of decentralisation.
- b. To identify key issues, bottlenecks and areas requiring further decentralization.
- c. To assess the perception of local level official regarding inter-governmental linkages.
- d. To assess capacity needs of local level officials, with a view to inform the design of the new government structure.

II. Scope and Sampling

The survey would be conducted in a rapid assessment mode, using two survey instruments. The target population for the survey consists of local level officials only in three Governorates and a total of 36 districts in these Governorates.

The Governorates selected for this rapid assessment survey are:

- a. Lahaj
- b. Amran
- c. Sana'a City

III. List of Target Offices at Governorate and District Levels

	Governorate	District
1	Finance & Planning	Education
2	Education	Education
3	Health	Health
4	Transport	Water Supply & Sanitation
5	Women's Development	Public Works
6	Police	
7	Social Welfare	
8	Trade & Industry	
9	Zakat	
10	Tax Authority Office	
11	Agriculture	
12	Youth 7 Sport	
13	Fisheries	
14	Public Works	
15	Civil Service Office	

APPENDIX 3: KEY RESOURCE PERSONS MET

1. Judge Morshed Ali Al-Arshani, Minister for Justice
2. Ali ALanisi, Chairman, Supreme National Authority for Combating Corruption
3. Obied Alhomor, Director and Board Member, Supreme National Authority for Combating Corruption
4. Mr. Abdul Rageb Saif Fateh, Vice Minister MOLA
5. Waheed Ali Rasheed, Governor of Aden
6. Dr. Mehdi Abdulsalam, Head of Aden Congress Party and Member of Parliament
7. Dr. Mohammed Zaid, Member Shura Council, Islah Party
8. Mohammed Shabani, Member Shura Council, Islah Party
9. Sami A. Saeed, Project Officer Water and Sanitation, UNICEF
10. Ms. Hema Vinod, Education Specialist, UNICEF
11. Deputy General Secretary, Aden Governorate
12. Yazan Nagi, Head of the Al-Mualla District
13. Local Council Members, Al-Mualla District
14. Heads of Health, Education, Planning, Finance Offices Al-Mualla District
15. Heads of Executive Offices of Agriculture, Finance, Planning, Education, Health Aden Governorate
16. Representatives of Aden Change Square
17. Aden CSOs
18. Khaled A. Wahed Noman, Head of Aden Council
19. Saleh Almahlos, General Secretary of Amran Governorate
20. Amran Civil Society Organisations
21. Executive Directors of Amran Governorate
22. Heads of Executive Offices of Health, Education, Zakat, Planning, Civil Service, Finance, Industries, Urban Planning of Amran Governorate
23. Head of District, General Secretary, Local Council members, Executive officers of Amran District
24. Dr Abdulbari Alarahabi, Deputy Head of Islah Party Amran
25. Abdullallah Homarn, Congress Party, Amran
26. Khalid Aldieni, Governor Hadramout
27. Awad Bahatem, Deputy Governor for Al-Saheh ,Hadramout Governorate, Head of Al-Moatamer Party
28. Mohammed Alakbari, Local Council Member
29. Abdulsalam Abood, Head of Youth in the Al-Moatamer Party and Director General of Ministry of Oil
30. Salem Saleh, Head of Mukala District
31. Executive Office of Hadramout, Almukala, Governorate
32. Executive Office of Almukala District
33. Ahmed Bamoalem, religious leader Hadramout
34. Saleh Bakaraman, religious leader Hadramout
35. Abu Alharith Bawazeer, religious leader Hadramout
36. Mohammed Balatief, Southern Revolution Council
37. Awad Alsawmahi, Southern Revolution Council
38. Bassam Almashgri, Activist, Socialist, Hirak, Hadramout Revolutionist Movement
39. Salem Saleh, Head of District Mukalla
40. Omer Bajersh, Chairman, Chamber of Commerce and Industry Hadramout
41. Omer Baessa, Deputy Chairman, Chamber of Commerce and Industry Hadramout
42. Yahiah Bajersh, Member, Chamber of Commerce and Industry Hadramout
43. Ausan Bahusain, Acting Manager, Chamber of Commerce and Industry Hadramout
44. Mohammed Baziad, Islah Party Hadramout
45. Dr Ahmed Bin Shamlan, Islah Party Hadramout
46. Eimad Bin Hamel, Islah Party Hadramout
47. Dr Motieb Baziad, Islah Party Hadramout
48. Dr Omer bin Habib, Islah Party Hadramout
49. Dr Abdullallah Baharoon, Chancellor of Ahqaf University
50. Mohammed Alhamed, Social Party Almukala
51. Mohammed Aldorafi, Deputy Minister for Local Financial Resources, MOLA
52. Ameen Abdulrazaq, Deputy Minister for Local Plans and Budget, MOLA

53. Deputy Minister, Women's Department, MOLA
54. Sulaiman Al-Qatabri, Assistant Deputy Minister, MOPIC
55. Abdullah Al-Ghithi, General Director, MOPIC
56. Ahmed Jonaid Al – Gonaïd, Deputy Governor of Hadramout
57. Naser Balbihieth, Assistant Deputy Governor, Hadramout
58. Abdulghani Al-Iryani, World Bank Consultant
59. Ryad Assaqqaf, Chairman of the Planning, Development and Finance Committee, Aden Local Council
60. Amin Abdlgabbar Al-Mohammadi, Assistant Deputy Minister of Budget, Ministry of Finance
61. Sheikh Mohammed Omer Ba-Mashmoos, Chairman of Aden Chamber of Commerce & Industry
62. Ansaf A.M. Mayo, Member of Parliament
63. Dr. Mohamed Noman Sallam, Assistant Representative, FAO
64. Belihu Negesse Aychiluhim, Technical Coordinator, FAO
65. Abulla H. Al-Shatter, Deputy Minister for Planning, MoPIC
66. Noor Hussain Al-Bakry, Deputy Minister for Researching & Designing Policies, Ministry of Civil Service and Insurance
67. Ali AlShamahi, Budget Director, MoF
68. Amien Al-sherai, Assistant Deputy for Local Council Audi, COCA,
69. Najeeb Jarallah, Local Units Audit Deputy Office Director, COCA
70. Eng.Tawfeeq Al-Sharjabi: Deputy Minister of Water Sector, Ministry of Water and Environment
71. Abdualqadir Hanash, General Director of the Public Water Authority
72. Yaseen Alazaiz, Director General of Studies and Local Resources development, Head of GJR and Cental Support Budget 2013 Distribution Committee, MoLA
73. Tim O. Pestschulat. Resident Director, FRIEDRICH EBERT STIFTUNG
74. Hohmoud Qaiyah, Project Manager, FRIEDRICH EBERT STIFTUNG
75. Tawfic Abdo Ahmed Albodaiji, Yemeni Transparency & Integrity Team
76. Mr. Mohammed Ali Al-Maqtary, Executive Directorm Yemeni Transparency & Integrity Team
77. Sanaa Governorate Head of Health Office and Accounts Manager
78. Mohammed Almohla, Director General of Sana'a Chamber of Commerce
79. Mohammed Al-Gabri, Relation Director, Sana'a Chamber of Commerce
80. High Council of Women: Hana Almutwakil, Entisar Shaker, Samirah Alfuhidi, Thikra AlNaqieb
81. Adnan Abdulgabar, Director General, Ministry of Civil Service and Insurance
82. Tobias Thiel, Good Governance Cluster, GIZ, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
83. Mr. Abdulrhman al-Samawi, General Director Of Planning Department, Ministry of Education,
84. Representatives of Almukala Change Square
85. Almukala CSOs

APPENDIX 3 CONTINUED: LIST OF KEY RESOURCE PERSONS MET

Civil Society Organizations – Aden

No.	Name	Institution
1	Suha Hasehm Yahya Al-Na'ami	Lawyer /Women Charity Association To Fight Poverty
2	Elham Ahmed Al-Kaf	Engineer/ Public Works And Highways – Al Awn Social Development Association
3	Anhar Hussain Ahmed	Director Of Peace Traffic – Office - Public Works And Highways Office - Al Awn Social Development Association
4	Mohammed Adel Saeed	Youth Environmental Law Association
5	Tariq Abdulrahman Al-Shargabi	Youth Environmental Law Association
6	Ahmed Saleh Abdu Ahmed Al-Jabri	General Coordinator / Youth Environmental Law Association
7	Um Al-Kair Abdullah Saleh Salah	Investment Officer / Aidarous Development Charity Association
8	Ashjan Abdullah Ahmad	Training And Rehabilitation Officer / Aidarous Association
9	Ne'ma Ali Ahmed	Solidarity Development Association
10	Yasin Altaf Yassin	Roa Youth Foundation For Development
11	Mohamed Ahmed Fadak	Advisor Of Development And Local Government / Widain Association
12	Amina Abdullah Al-Hashemi	Al-Ferdous Developmental Association / Buraikah District
13	Asrar Abdu Omar Suleiman	Teacher / Aden School
14	Khadija Bohij Abdullah	University Student
15	Nadia Munib Abdulkhaliq Abduljani	Students Affairs
16	Nada Ali Al-Sibai	Political And Social Activist
17	Marwan Mohammed Azazi	Chairman Of Change Forums Union / Aden
18	Rueda Bohij Hafiz Abdullah	Member Of Change Forums Union / Aden
19	Dr. Adel Abdullah Ba Ashen	Doctor - Secretary General Of Change Youth Forums Union / Aden
20	Anis Hussein Aal Yacoub	Chairman Of The Preparatory Committee For The National Conference Of Youth
21	Anwar Amer Bin Azzun	Member Of The Organizing Committee For The Youth Revolution - Aden
23	Basim Fadel Al-Sha'abi	Youth Journalist And Publisher
24	Ali Qasim	Spokesman Of Coordinating Council Of The Southern Revolutionary Forces
25	Khalid Mohammed Alleod	Youth National Democratic Party

APPENDIX 3 CONTINUED: LIST OF KEY RESOURCE PERSONS MET

No.	Name	Institution
1	Fadi Abdullah Mahroos	Eradah Foundation For Civil Development
2	Raid Saeed Rwished	Eradah Foundation For Civil Developmen
3	Amen Ahmed Al-Hamed	Youth Initiative Foundation
4	Abdulrahman Bin Mansoor	
5	Abdulraqueep Abu Baker Hoori	Al-Fajer Charity Foundation
6	Mohammed Saleh Al-Jaberi	Students Association - Sah District
7	Abdulgani Hameed Ba Joiel Al-Gabiri	Students Association - Sah District
8	Hani Ahmed Bajaber	Association Of Yemenia Wisdom / Hadramout
9	Khaleel Saeed Al-Nobi	Youth Development And Creativity Association
10	Ali Omer Ba Adeni	Geographical Association
11	Ahmed Saeed Ahmed	Forum Of University Soqtra Students
12	Ali Mubark Ali	Forum Of University Soqtra Students
13	Adel Mohammed Ba Hameed	Opinions Foundation For Civil Development
14	Nawaaf Mohammed Ba Farwaan	Aid Foundation For Development
15	Fayiz Salim Bani	Civil Society Organizations / Hadramout Governorate
16	Jomaan Saeed Bin Nasser	Civil Society Organizations / Hadramout Governorate
17	Rasheeda Saleh Bin Ali Jabber	Civil Society Organizations / Hadramout Governorate
18	Fatima Muslim Omer Al-Mashjari	Immigrant Development Foundation
19	Fatima Saeed Al-Shoaibi	Immigrant Development Foundation

APPENDIX 3 CONTINUED: LIST OF KEY RESOURCE PERSONS MET

No.	The Target Organization/ Name Of The Organization	Organization Representative
1	Amran Agricultural Cooperative Association	Mohammed Hussein Alsoar
2	Shaimaa Social Charity Women Association	Rehab Abdelkader Al-Hada'a
3	Shrara Agricultural Cooperative Association	Saleh Ahmed Daoud
4	Solidarity Social Charity Association	Mohammed Abdullah Badr Al-Deen
5	Amran Social Charity Women Association	Bilqis Mansour Alqosari
6	Al - Trahom Social And Charity Association	Abdul Karim Nasser Abdullah Al-Ansi
7	Al - Trahom Social And Charity Association - Secretary General	Ibrahim Ahmed Mohammed Abu Talib
8	Wa'ad Youth Association For Social Awareness	Abdu Abdullah Yahya
9	Branch Of Eslah Association	Hussein Almoafa
10	Al – Tawafoq Association For Displaced People Care	Fateh Askar Monjed
11	Childhood Protection Social Association	Mohammed Ali Mohsen Al-Jahili
12	Al - Mantap Charity Women Association	Nabeela Ali Al-Haj Mohamed Yahya Jaber
13	Educational Works Syndicate	Mohammed Yahya Jaber
14	Workers Union	Ali Saleh Al-Najjar
15	Workers Union	Abdulwahab Al-Hajri
16	Workers Union	Khaled Yehia Mohamed Ja'adan
17	Kindhearts Association	Ali Sager Saleh Saree'a
18	Revolutionary Council - Amran	Dahane Yahya
19	Yemeni Association For Prevention Of Incurable Diseases	Ahmed Abdo Al-Othribi
20	National Democratic Front	Amen Tammah Hussein Al-Tammah

APPENDIX 4

POLICY PAPER FOR FUTURE FORM OF GOVERNMENT AND DECENTRALISATION **MAPPING THE STATE-SOCIETY RELATIONS**

1. How do different societal groups (businessmen, youth, tribal leaders, religious leaders, women, civil society) engage with the State? What are the notable regional differences in these engagements?
2. What are the incentive structures for positive State-Society relations and engagement?
3. What are the key sources of power, conflict, discontent, tensions between the State and the Society? How do these impact structures, outcomes and engagement at different tiers of the State and in particular, at the local levels?
4. What shapes the interests of the elite? How do they impact accountability, service delivery and collective good?
5. What are the common interests of the State and the Society? How do these play out in the arena of local governance?
6. Which are the key informal institutions (e.g. tribal and religious leaders)? How are they organised and how do they operate? Do these undermine public authority or supplement it in some ways? Are there regional differences in the structure, outlook, intent and performance of these informal institutions?
7. What are the factors that encourage or inhibit constructive State-Society relations and collective action?
8. What are the political economy considerations of taxation? Are there regional differences and if so, what are these?
9. What are the political economy considerations for natural resource management? Are there regional difference and if so, what are these?
10. What are the perverse incentives for elites to perpetuate fragility of the State and of Society and to disengage from the poor? (e.g. is the PSA a perverse incentive?)
11. How would State-Society relations work in a Federal structure?
12. What are the political economy considerations for setting up Economic Free Zones? What impact do they have on local State-Society relations?
13. What are the differences in the sources of authority, influence and incentives for tribal systems in different regions? What are the commonalities? How do these impact State-Society relations particularly at the local level?

APPENDIX 5

POLICY OPTIONS PAPER FOR FUTURE FORM OF GOVERNMENT AND DECENTRALISATION: FRAMEWORK			
Main Framework Areas	Sub-Framework Areas	Principal Questions	Sources of Information
Relevance	Legal	<ol style="list-style-type: none"> 1. How can the legal mandates of different tiers of governments be clearly identified? 2. How can we ensure that the subordinate legislation clarify the principal legislation in a way that supports effective implementation? 3. How can the role of the parliament(s) be legally defined in relation to monitoring outputs, outcomes and impact of policies, programs and investments at different tiers, with a view to following the broader, national goals? 4. How can inter-governmental relations be clearly indicated in legislation 5. How do we ensure inter and intra sectoral consistency in substantive and subordinate legislation? 	<ol style="list-style-type: none"> 1. Review of laws, rules, regulations 2. Review of relevant subordinate legislation 3. Regional and international best practice
	Institutional	<ol style="list-style-type: none"> 1. How do we ensure that the institutional vision for local governance is clearly articulated, understood and implemented? 2. How do we ensure that roles and responsibilities are clearly defined, documented and understood at all tiers? 3. How can inter and intra agency relationships be clearly defined, documented and understood? 4. How do we ensure consistency and complementarities in institutional roles and responsibilities and legislation? 5. What mechanisms, incentives and triggers can be put in place to identify, plan and implement changes in institutional structures, processes and business processes? 	<ol style="list-style-type: none"> 1. Survey instruments 2. Interviews with key resource persons 3. Focus Group discussions 4. Field visits 5. Regional and international best practice
	Policy	<ol style="list-style-type: none"> 1. What mechanisms can we propose that allow for roles and responsibilities of legislature and executive to be clearly defined in relation to policy development, implementation and monitoring? 2. How do we ensure consistency and complementarities between policies and the legal framework for local governance? 	<ol style="list-style-type: none"> 1. Review of existing policies in select sectors. 2. Interviews with key resource persons 3. Focus Group discussions 4. Field visits 5. Regional and international best practice
Adequacy	Political	Please refer questions in Survey Instruments	<ol style="list-style-type: none"> 1. Survey instruments 2. Focus Group Discussions 3. Interviews with key resource persons 4. Literature review 5. Problem tree analysis
	Administrative		
	Fiscal		
	Financial		

Responsiveness	Institutional	<ol style="list-style-type: none"> 1. What tools, mechanisms and practices for institutional responsiveness can we propose? 2. How can these tools, mechanisms and practices form part of rules, regulations? 3. How can these tools, mechanisms and practices be enforced equitably across the institutional tiers? 4. What are the incentives, drivers and triggers for institutional responsiveness? 5. How are organisational culture, behaviours and values linked with strategic direction and its results? 	<ol style="list-style-type: none"> 1. Survey instruments 2. Focus Group Discussions 3. Interviews with key resource persons 4. Literature review
	Financial	<ol style="list-style-type: none"> 1. How can financing of investments and services be made responsive to local needs? 2. What are the instruments, processes and practices for actualizing this financial responsiveness? 3. How can financial responsiveness be monitored at all tiers? 	<ol style="list-style-type: none"> 1. Review of financial management rules, regulations 2. Interviews with key resource persons 3. Focus Group discussions 4. Literature review 5. Regional and international best practice
	Policy	<ol style="list-style-type: none"> 1. What are the mechanisms, platforms and processes for ensuring alignment of policies with emerging priorities and needs? 2. How do we ensure effectiveness and inclusiveness of these mechanisms, platforms and processes? 	<ol style="list-style-type: none"> 1. Interviews with key resource persons 2. Focus Group discussions 3. Regional and international best practice 4. Literature review
Voice and Accountability	Political	<ol style="list-style-type: none"> 1. What arrangements for legislative oversight can we propose? 2. How mechanisms can be proposed for effectiveness of these legislative oversight arrangements? 	<ol style="list-style-type: none"> 1. Review of select laws, rules, regulations 2. Focus Group Discussions 3. Interviews with key resource persons 4. Literature review 5. Regional and international best practice
	Institutional	<ol style="list-style-type: none"> 1. How can internal administrative accountability be structured? 2. What are the tools, processes and mechanisms for administrative accountability at all tiers? 3. What are the possible internal grievance redress procedures? 4. What linkages and mechanisms can we propose between functional roles and responsibilities, internal administrative accountability systems and results? 5. What instruments, processes and mechanisms can be used to link functional roles and responsibilities, internal administrative accountability systems and results at different tiers of service delivery? 6. How can accountability and delivery agencies be firewalled? What are the tools, processes and mechanisms to remove or reduce conflict of interest? 7. How can agencies and entities at different tiers monitor, measure, and review their policies, programmes and services to make sure they deliver intended results? 8. What tools, processes and mechanisms can be used 	<ol style="list-style-type: none"> 1. Review of select laws, rules, regulations 2. Focus Group Discussions 3. Interviews with key resource persons 4. Survey instruments 5. Literature review 6. Regional and international best practice

		to review policies, programmes and services? Can we propose vertical and horizontal linkages between these? 9. What are the incentives, drivers and triggers for institutional accountability?	
	Public	<ol style="list-style-type: none"> 1. What tools, processes and mechanisms can we propose for ensuring public accountability of agencies and entities at all tiers? 2. How do we ensure effective of these tools, processes and mechanisms? 3. What public grievance redress systems can we propose? 4. How do ensure the effectiveness of these public grievance redress systems? 5. How can social accountability and participatory monitoring be institutionalized at different tiers? 6. What are the tools, processes and mechanisms for ensuring, promoting, facilitating inclusive planning, budgeting and oversight through social accountability processes? 7. What platforms, mechanisms and instruments for efficient stakeholder relationship management at all tiers can we propose? 8. How can the local governance system be linked to freedom of information? 	<ol style="list-style-type: none"> 1. Review of laws, rules and regulations related to auditing, anti-corruption, freedom of information 2. Focus Group Discussions 3. Interviews with key resource persons 4. Survey instruments 5. Literature review 6. Regional and international best practice
Equity	Political	<ol style="list-style-type: none"> 1. How can the political process, including elections, appointment to political posts and removal therefrom, be made equitable? 2. How do we ensure participation of women and minorities in political processes at all tiers? 3. How can the political process at large be made more equitable in terms of representation from different segments of society? 4. How can political space for civil society members who do not wish to be part of the formal political system (through elections), be created at different tiers? 	<ol style="list-style-type: none"> 1. Review of select laws, rules, regulations 2. Focus Group Discussions 3. Interviews with key resource persons 4. Survey instruments 5. Literature review 6. Regional and international best practice
	Legal	<ol style="list-style-type: none"> 1. How do we achieve equity in legislation and the legislative process? 2. How can we achieve equity in relation to the powers of legislation at different tiers? 	<ol style="list-style-type: none"> 1. Review of select laws, rules, regulations 2. Focus Group Discussions 3. Interviews with key resource persons 4. Literature review 5. Regional and international best practice
	Institutional	<ol style="list-style-type: none"> 1. How do we achieve equity amongst the institutions and institutional mechanisms at different tiers? 2. What systems, structures, tools, mechanisms, and incentives can we propose to ensure institutional equity? 3. How can we build equity in institutions in relation to 	<ol style="list-style-type: none"> 1. Review of select laws, rules, regulations 2. Focus Group Discussions 3. Interviews with key resource persons 4. Survey instruments 5. Literature review 6. Regional and international best practice

		<p>knowledge, capacity and opportunity for human capital?</p> <p>4. What institutional mechanisms can we propose to ensure institutional equity in terms of power, authority, responsibility, results and</p>	
	Financial	<p>1. How can ensure financial and fiscal equity at different tiers?</p> <p>2. How can the powers for taxation be made equitable across different tiers?</p> <p>3. What level and nature of fiscal autonomy is required for ensuring fiscal and financial equity?</p> <p>4. With specific reference to natural resources, how can the revenue sharing be made more equitable?</p> <p>5. What mechanisms can we propose to oversee implementation of financial and fiscal equity?</p>	<p>1. Review of select laws, rules, regulations</p> <p>2. Focus Group Discussions</p> <p>3. Interviews with key resource persons</p> <p>4. Literature review</p> <p>5. Regional and international best practice</p>
Sustainability	Political	<p>1. What mechanisms (constitutional, administrative, political, societal/collective action) can we propose to ensure sustainability of the political process at different tiers?</p> <p>2. How do we ensure that sustainability of political processes do not become mutually exclusive of sustainability of economic, developmental and institutional processes?</p> <p>3. How can the power of removal or abolition or abeyance of political processes be made rules-based?</p>	<p>1. Review of select laws, rules, regulations</p> <p>2. Focus Group Discussions</p> <p>3. Interviews with key resource persons</p> <p>4. Survey instruments</p> <p>5. Literature review</p> <p>Regional and international best practice</p>
	Legal	<p>1. How do we achieve sustainability of legislation processes at different tiers?</p> <p>2. What mechanisms can we propose that link legislation sustainability with institutional, political, financial/economic and community action/societal sustainability?</p>	<p>1. Review of select laws, rules, regulations</p> <p>2. Focus Group Discussions</p> <p>3. Interviews with key resource persons</p> <p>4. Survey instruments</p> <p>5. Literature review</p> <p>Regional and international best practice</p>
	Institutional	<p>1. How do we achieve sustainability of institutions and institutional mechanisms at different tiers?</p> <p>2. What systems, structures, tools, mechanisms, and incentives can we propose to ensure institutional sustainability?</p>	<p>1. Review of select laws, rules, regulations</p> <p>2. Focus Group Discussions</p> <p>3. Interviews with key resource persons</p> <p>4. Survey instruments</p> <p>5. Literature review</p> <p>Regional and international best practice</p>
	Financial	<p>1. How can ensure financial and fiscal sustainability at different tiers?</p> <p>2. What mechanisms, tools, systems and incentives can we propose that promote, facilitate and protect financial sustainability across different tiers?</p> <p>3. What mechanisms can we propose to oversee implementation of financial and fiscal sustainability?</p> <p>4. How can financial sustainability be facilitated through specific political, administrative and legal powers, distributed across different tiers?</p>	<p>1. Review of select laws, rules, regulations</p> <p>2. Focus Group Discussions</p> <p>3. Interviews with key resource persons</p> <p>4. Survey instruments</p> <p>5. Literature review</p> <p>Regional and international best practice</p>

APPENDIX 6: INDICATIVE LIST OF CONFLICTING LAWS

Indicative List of Legislation in Conflict with the Local Administration Law	
No.	Title of Legislation
Legislation on Administration	
1.	Law No. (19) of the year 1991 on the civil service and its implementing decisions
2.	Presidential Decree - Law No. (20) of the year 1991 on the Law of the Council of Ministers
3.	Law No. (31) of the year 1996 on social welfare and implementing decisions
4.	Regulation of the Ministry of Public Health and Population issued by a Presidential Decree No. (1) of the year 1999
5.	Regulation of the Ministry of Civil Service and Insurance issued by a Presidential Decree No. (119) of the year 1992
6.	Regulation of the Ministry of Finance issued by a Presidential Decree No. (127) of the year 1993
7.	Regulation of the Ministry of Education issued by a Presidential Decree No. (28) of the year 1993
8.	Regulation of the Ministry of Construction and Urban Development that issued by a Presidential Decree No. (2) of the year 1995
9.	Regulation of the Ministry of Social Affairs and Labour issued by a Presidential Decree No. (50) of the year 1993
10.	Regulation of the Ministry of Fisheries issued by a Presidential Decree No. (147) of the year 1995
11.	Regulation of the Ministry of Agriculture and Irrigation issued by a Presidential Decree No. (5) of the year 1996
12.	Regulation of the Ministry of Information issued by a Presidential Decree No. (95) of the year 1998
13.	Regulation of the Ministry of Youth and Sports issued by a Presidential Decree No. (95) of the year 1996
14.	Regulation of the Ministry of Planning and Development
15.	Regulation of the Ministry of Culture
16.	Regulation of the Ministry of Tourism and Environment
17.	Regulation of the Ministry of Industry and Trade
Legislation on Finance	
18.	Law No. (8) of the year 1990 on financial law and its amendments and implementing decisions.
19.	Law No. (13) of the year 1990 on the collection of public funds, as amended, and implementing decisions
20.	Republican Decree - Law No. (23) of the year 1991 on Civil Status and Civil Registry and implementing decisions
21.	Law No. (31) of the year 1991 on income taxes, and its amendment, and implementing decisions
22.	Republican Decree - Law No. (29) of the year 1991 on the Land Registry.
23.	Law No. (42) of the year 1991 on the Regulation of fishing and the exploitation and protection of aquatic and its amendments and implementing decisions
24.	Law No. (33) of the year 1991 on CR, and its amendment, and implementing decisions
25.	Law No. (46) of the year 1991 on traffic, and its amendment, and its implementing decisions
26.	Law No. (50) of the year 1991 on mines, quarries and implementing decisions
27.	Law No. (32) of the year 1992 on the practice of health professions, and its amendment, and its implementing decisions
28.	Law No. (40) of the year 1992 on the organizing firearms and ammunition, trafficking and implementing decisions
29.	Law No. (29) of the year 1992 on documentation, and its amendment, and its implementing decisions
30.	Law No. (6) of the year 1993 on establishing a fund to encourage agricultural production and fisheries, as amended, and implementing decisions
31.	Prime Minister Decision No. (23) of the year 1994 on the list of irregularities planning and construction work
32.	Prime Minister Decision No. (24) of the year 1994 on the list of irregularities cleanliness and environmental health
33.	Law No. (5) of the year 1995 on labour law and its amendments and implementing decisions
34.	Law No. (22) of the year 1995 on the establishment of a road maintenance fund and the Yemeni Council for the management of the Fund and its amendments and implementing decisions
35.	Law No. (10) of the year 1996 on the establishment of a fund of young and youth care and youth and sport, and its amendment and its implementing decisions
36.	Law No. (12) of the year 1996 on the establishment of a fund of the restoration and maintenance of school buildings and equipment, and its amendment and its implementing decisions
37.	Law No. (2) of the year 1999 on Zakat.
38.	Republican Decree - Law No. (11) of the year 1999 on the organization of civil education institutions and private and implementing decisions
39.	Law No. (20) of the year 1999 on the establishment of cleanliness funds to and cities improvement, and its amendment, and its implementing decisions
40.	Law No. (39) of the year 1999 on Hygiene and implementing decisions
41.	Law No. (60) of the year 1999 on medical facilities and health and implementing decisions

APPENDIX 7: LOCAL AUTHORITIES COMMISSION

Composition

- (a) A renowned local governance specialist as Chairman ;
- (b) Two members from the civil society, one each nominated by the leader of the House and leader of the Opposition of the House of Representatives;
- (c) Two eminently qualified and experienced technocrat members selected by the Government; and
- (d) Deputy Minister, Regulations of MOLA to be ex-officio member and secretary of the Commission.

Provided that in case of equality of vote, the Chairman shall have a casting vote.

The Local Authority Commission may, for the performance of its functions, co-opt any official of the Government for any specific assignment.

The tenure of the members of the Local Authority Commission, other than the Deputy Minister MOLA, shall be three years.

The Ministry of Local Administration shall provide secretarial support to the Local Authority Commission and render assistance in its operations.

The Government shall provide funds for the Local Authority Commission in the annual budget.

Functions of the Provincial Local Government Commission.-The functions of the Local Authority Commission shall include:

- (a) Conduct of annual and special inspections of the local governments and submission of reports thereof to the Minister for Local Administration.
- (b) Conduct, either *suo moto* or when directed by the Parliament or the Minister for Local Administration, an inquiry into any matter concerning a local government;
- (c) Resolve disputes between any Department of the Government and District Government or between two District Governments;
- (d) Submit to the Parliament, an annual report on the over-all performance of the local authorities.
- (e) Perform in-depth research projects on matters considered important by the Commission for all levels of local administration.
- (f) Holds quarterly meetings to provide a forum at which national local authorities present their concerns, possible amendments to municipal codes, and other legislative proposals which they deem important to local government

Accountability- The Local Authority Commission shall be responsible to the Parliament.

APPENDIX 8: LOCAL GOVERNMENT FINANCE COMMISSION IN UGANDA

The Local Government Finance Commission (LGFC) is an autonomous arm of government responsible for advising central and local governments on issues of fiscal decentralisation.

The Commission is established under Article 194 of the 1995 Constitution and has been operational since February 1995 following an official launch by Hon. Bidandi Ssali, the then Minister of Local Government.

The Commission is constituted by seven members appointed by the President; four of which are nominated by the District Councils (3) and Urban Councils (1). The other three are nominated by the Minister responsible for Local Governments in consultation with the Minister responsible for Finance, Planning and Economic Development.

The Commission is serviced by a secretariat organised in two departments, namely central grants and local revenue on the one hand (comprising of economists and statisticians) and administration on the other. There are currently 28 staff members in the secretariat headed by a Commission Secretary.

Functions of the Commission

The functions of the Commission as spelt out in article 194 of the Constitution and elaborated in section 77 of the Local Governments Act, 1997 are to:

- a. Advise the President on all matters concerning the distribution of revenue between the Government and local governments and the allocation to each local government of moneys out of the Consolidated Fund.
- b. Consider and recommend, in consultation with the National Planning Authority, to the President the amount to be allocated as equalisation and conditional grants and their allocation to each local government.
- c. Consider and recommend to the President potential sources of revenue for local governments.
- d. Advise the local governments on appropriate tax levels to be levied by local governments.
- e. Deal with disputes between local governments over financial matters and tender advice relating thereto to the parties involved, the Minister and the Minister responsible for Finance as may be necessary.
- f. Monitor local governments' budgets to ensure that they don't significantly detract from priority programme areas; where budgets detract from PPA, the LGFC is to inform the council and the President through the Minister for appropriate action.
- g. Perform such other functions as Parliament may prescribe.

APPENDIX 9: OVERVIEW OF CONDITIONAL GRANTS IN BANGLADESH

Strengthening local governance through community participation and oversight has been identified as an important element of the Government of Bangladesh's (GoB) Poverty Reduction Strategy Paper (PRSP). Following the PRSP recommendations, the GoB has already taken important steps to strengthen local governance, particularly through the introduction of the UP Block Grant. Although small (on average Tk. 7 lac per UP or Tk. 28.21 per capita annually), the grant has established the important principles of local discretion and accountability, with community oversight (Das and Ahmed, 2010).

The funding mechanism included a set of minimum conditions governing eligibility for funding and performance measures to adjust further funding. Minimum conditions are designed to ensure that each participating UP has an acceptable minimum capacity to receive and handle devolved funds, while performance measures are designed to provide incentives to enhance governance and service delivery (Table 2-1).

Table 2-1: Minimum Conditions and Performance Measures for LGSP-LIC UPs

Minimum Conditions	Performance Measures
<ul style="list-style-type: none"> Regular opening of office to assess minimum administrative capacity Regular monthly meetings to assess minimum decision-making Women participation in meetings to assess minimum financial management capacity Updated cash-book to assess minimum financial management capacity Specific bank account for development funds to assess financial capacity Public involvement of UP performance to ensure participatory assessment 	<ul style="list-style-type: none"> Fiscal performance to improve tax capacity, revenue mobilization, and utilization of funds for enhanced sustainability Performance of UP office to reward efficiency, effectiveness open access Performance of UP Committees to improve accountability Gender Performance to improve gender equity and inclusiveness Budgeting and financial management to improve compliance with statutory Scheme implementation to ensure efficient project preparation, implementation and supervision to enhance effectiveness and sustainability of services Transparency and communication to promote more open government with greater community involvement

APPENDIX 10: DEMARCATION COMMISSION

The Demarcation Commission of Yemen would be a Constitutional Body, with its functions, powers, composition and processes to be defined under an Act of Parliament. The proposed structure and functions are given below:

Status

The Commission would be:

(a) a juristic person; (b) Independent; and (c) impartial

Functions

The functions of the Commission would be:

(a) to determine administrative boundaries in accordance with the relevant Act and other appropriate legislation; and (b) to render an advisory service in respect of matters provided for under the relevant Act and other appropriate legislation when so requested.

General powers

(1) The Commission may the power to:

- (a) determine its own staff and appoint employees having due regard to available funds;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;
- (c) acquire or dispose of any right in or to property, subject to any rules in this regard;
- (d) open and operate its own bank accounts;
- (e) insure itself against any loss, damage or risk;
- (f) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
- (g) institute or defend any legal action;
- (h) collect and disseminate relevant information; and
- (i) do anything that is incidental to the exercise of any of its powers.

(2) The Board may not borrow money.

(3) The Board may require a province or municipality that may reasonably be affected by a boundary determination to provide the Board or any of its committees with facilities, available to that municipality, for the holding of meetings.

Composition

(1) The Commission would consist of no fewer than seven and no more than 10 members appointed by the President. The composition would need to: (a) be broadly representative of the Yemeni society; (b) reflect regional diversity; and (c) collectively represent a pool of knowledge concerning issues relevant to administrative division.

Qualifications

(1) A member of the Board must be a Yemeni citizen and have a qualification or experience in or knowledge appropriate to- (i) development economics; (ii) integrated development planning; (iii) community development; (iv) traditional leadership and traditional communities.

Demarcation procedure

- a. Public notification of determination of administrative boundaries through newspapers, electronic media and other means and invitation of feedback within specified time period.
- b. Consideration by the Commission once the period for written representations and views has expired
- c. Conduct Public meetings, the schedule of which must be circulated in advance through print and electronic media for general public awareness.
- d. Carry out formal investigations where necessary through an Investigation Committee.

Accountability and reporting

(1) The Commission would be accountable to Parliament and must annually submit to both Houses of Parliament a written report on the activities of the Commission during a financial year. A copy of the report must also be submitted to each provincial legislature.

(2) The report must be submitted within six months after the end of the financial year to which it relates, and must include audited financial statements if those statements are available at that time, reflecting the Commission's financial affairs during the year.

APPENDIX 11: CHARTER CITIES

CHARACTERISTICS OF A CHARTER CITY

A charter city is a new type of special reform zone. It extends the concept of a special economic zone by increasing its size and expanding the scope of its reforms. The concept allows for cross-national government partnerships that facilitate the transfer of working systems of rules to greenfield locations.

The Role for Rules

In too many places, weak or outdated rules hold people back. Some rules limit who can sell power, so electricity is expensive. Others fail to contain crime. Others make it difficult to start a business or open a plant. Because of this, firms build new factories not in places where the need for work is highest, but in places where electricity is inexpensive, people and property are safe, and doing business is relatively easy; and workers migrate from places with inefficient rules to places with better rules, earning wages many times higher than what they can earn in the places they leave behind. Charter cities offer a third option. By copying rules that work, new cities can quickly give millions of people the chance to move to places that start with better rules.

Charter City Structure

The concept is very flexible, but all charter cities should share these four elements:

1. A vacant piece of land, large enough for an entire city.
2. A charter that specifies in advance the broad rules that will apply there.
3. A commitment to choice, backed by voluntary entry and free exit for all residents.
4. A commitment to the equal application of all rules to all residents.

The broad commitment to choice means that no person, employer, investor, or country can be coerced into participating. A charter should describe the process whereby the detailed rules and regulations will be established and enforced in a city. It should provide a foundation for a legal system that will let the city grow and prosper. This legal system will be particularly important in the early years of the city's development, when private investors finance most of the required urban infrastructure.

Partnership Arrangements

There are three distinct roles for participating nations: *host*, *source*, and *guarantor*. The host country provides the land. A source country supplies the people who move to the new city. A guarantor country ensures that the charter will be respected and enforced for decades into the future. Because these roles can be played by a single nation or by several countries working together as partners, there are many potential arrangements.

Source: www.chartercities.org

APPENDIX 12: COUNCIL OF COMMUNITY LEADERS

Functions of Local Level Council of Elders/Traditional Leaders

- a. Administering the affairs of the community in accordance with customs and tradition;
- b. supporting municipalities in the identification of community needs;
- c. facilitating the involvement of the community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
- d. recommending, after consultation with the relevant local and provincial houses, appropriate interventions to government that will contribute to development and service delivery
- e. participating in the development of policy and legislation at a municipal level;
- f. participating in development programmes of the local, provincial and national spheres of government;
- g. promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- h. promoting indigenous knowledge systems for sustainable development and disaster management;
- i. alerting any relevant municipality to any hazard or calamity, and contributing to disaster management in general;
- j. performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.

Functions of Provincial Council of Elders/Traditional Leaders

1. to cooperate with the provincial houses of traditional leaders
2. promote the role of traditional leadership within a democratic constitutional dispensation;
3. nation building;
4. peace, stability and cohesiveness of communities;
5. the preservation of the moral fibre and regeneration of society;
6. the preservation of the culture and traditions of communities;
7. socio-economic development and service delivery;
8. the social well-being and welfare of communities; and
9. the transformation and adaptation of customary law and customs so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by preventing unfair discrimination;
10. promoting equality; and
11. seeking to progressively advance gender representation in the succession to traditional leadership positions; and
12. to enhance co-operation between the National Council of Elders/Traditional Leaders and the various provincial houses with a view to address matters of common interest.

Functions of National Council of Elders/Traditional Leaders

1. consider Parliamentary Bills referred to it by Parliament;
2. advise the national government and make recommendations in respect of
3. matters relating to policy and legislation regarding traditional leadership; the role of traditional leaders; customary law; and the customs of communities observing a system of customary law;
4. may investigate and make available information on traditional leadership, traditional communities, customary law and customs;
5. must, at the request of a member of the Federal Cabinet, advise him or her in connection with any matter referred to in this section;
6. must complement and support the work of government at national level;
7. must form cooperative relations and partnerships with government at national level in development and service delivery;
8. participate in international and national programmes geared towards the development of rural communities;
9. participate in national initiatives meant to monitor, review and evaluate government programmes in rural communities; and
10. perform tasks as may be determined by a member of the Federal Cabinet or as may be provided for in national legislation.

APPENDIX 13: NATIONAL EXTRACTIVE INDUSTRIES COMMITTEE OPTION 3

Composition:

1. Federal Minister for Natural Resources	Chair
2. Provincial Ministers for Natural Resources	Members
3. Two Representatives from the Council of Elders/Traditional Leaders	Members
4. Two Members of the Federal Senate (one from Opposition benches)	Members
5. Two Members of the Provincial Senate (one from Opposition benches)	Members
6. Two Members of the District Council (one from Opposition benches)	Members
7. Chairman or Representative of the Procurement Regulatory Authority	Member
8. Chairman or Representative of the Higher Authority for Tender Control	Member
9. Head of EITI Yemen	Member
10. Head of Transparency International Yemen	Member
11. Three representatives from civil society (at least one of them female)	Member
12. President of Federation of Chamber of Commerce & Industry	Member
13. CEO of Yemen General Corporation for Oil & Gas/Mineral Resources	Member
14. Secretary of the Ministry for Natural Resources	Member/Secretary

TOR:

1. The Committee reports to the Federal Parliament.
2. Develop a transparency framework for the extractive industries, based on the EITI principles and oversee its implementation.
3. Advise the Federal Parliament on the award of concessions, licenses and other forms of contracts for the extractive industry.
4. Develop a work plan and implementation strategy for presentation to the Parliament and follow up the implementation process.
5. Advise Parliament on policy issues related to the extractive industries.
6. Based on the principles and criteria of the international EITI, develop selection criteria to identify the operations and companies that should join EITI, and follow up the natural resource development of the country.
7. Collect, compile, interpret and keep data and information required for the implementation of the transparency framework.
8. Follow up with the extractive companies and government revenue collecting agencies for timely provision of payments and revenue data to auditor to be audited.
9. Develop communication strategy and communicate to the public and international community information on the implementation and outcomes achieved as a result of the initiative, hold workshop with stakeholders, and organise media briefings.
10. Develop, publish & disseminate annual and other periodical reports for the Parliament and the general public.
11. Decisions to be made by vote.

APPENDIX 14: TERMS OF REFERENCE OF INTERGOVERNMENTAL RELATIONS DEPARTMENT

Role and Mandate

- To promote harmony and trust amongst Provinces and in their relationships with the Federation.
- To listen to the voices of the Provinces/federating units in all fields of common national concern and to encourage uniformity of approach to issues and challenges.
- To facilitate discussion of policy issues that have economic, social and administrative implications for the constituent units.

TOR

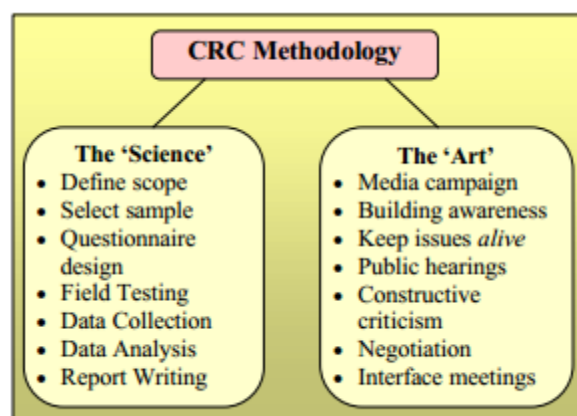
- General coordination between the Federal Government and the Provinces in economic, social and administrative fields.
- Promoting uniformity of approach in formulation of policies and their implementation by the Provinces and the Federal Government in all fields of common national concern.
- Discussion of policy issues emanating from the Provinces that have economic, social or administrative implications for the country as a whole.
- Coordination with Ministries/Agencies concerned to evolve suitable response to criticism of Government policies, programmes and actions and to project a proper image of the Government.
- Any other matter referred by a Province or any of the Ministries or Divisions of the Federal Government.

APPENDIX 15: CITIZEN REPORT CARDS

Citizen Report Cards (CRCs) are participatory surveys that solicit user feedback on the performance of public services. But they go beyond being just a data collection exercise to being an instrument to exact public accountability through the extensive media coverage and civil society advocacy that accompanies the process. CRCs originated in 1994 in Bangalore, India, through the work of an independent NGO – the Public Affairs Center. The idea was to mimic the private sector practice of collecting consumer feedback and applying it to the context of public goods and services. The surveys derive their name from the manner in which data is presented. Just as a teacher scores a student's performance on different subjects in a school report card, CRC data aggregates scores given by users for the quality and satisfaction with different services like health, education, police, etc...or scores on different performance criteria of a given service, such as availability, access, quality and reliability. The findings thus present a collective quantitative measure of overall satisfaction and quality of services over an array of indicators. By systematically gathering and disseminating public feedback, CRCs serve as a “surrogate for competition” for state-owned monopolies that lack the incentive to be as responsive as private enterprises to their client's needs. They are a useful medium through which citizens can credibly and collectively ‘signal’ to agencies about their performance and pressure for change.

Citizen Report Cards are used in situations where demand side data, such as user perceptions on quality and satisfaction with public services, is absent. Starting from their original context of evaluating urban services in Bangalore, CRCs have been applied in different geographic and sectoral contexts – the common theme being to use a survey that captures consumer data in a comparative manner to demand responsiveness. Some of the actual applications include (i) using CRCs as a basis for performance based budget allocations to pro-poor services (Philippines), (ii) cross-state comparisons on access, use, reliability and satisfaction with public services (India), (iii) supplementing national service delivery surveys (Uganda), and (iv) governance reform projects (Ukraine and Bangladesh). The success of these initiatives has varied, depending in large part on the ability to negotiate change, the degree of participation, and the presence (or absence) of a political champion. In general, an effective CRC undertaking requires a skilled combination of four things: i) an understanding of the socio-political context of governance and the structure of public finance, ii) technical competence to scientifically execute and analyse the survey, iii) a media and advocacy campaign to bring out the findings into the public domain, and iv) steps aimed at institutionalizing the practice for iterative civic actions

Ideally, governments can use report cards for performance-based budgeting and link public opinion with public spending. This is what has been done by the Department of Budget in the Philippines. Alternatively, CRCs can be adapted to create ‘governance rating systems’ in a decentralized setting – an experiment attempted in Bangladesh and in Ukraine's People's Voice Project. Service providers and ministries can in turn link CRC findings with their internal management and incentive systems.



Source: Citizen Report Card Surveys-- A Note on the Concept and Methodology, World Bank 2004

APPENDIX 16: ESTIMATION OF COSTS OF PROVINCIAL GOVERNMENTS

Basic simulation for the provincial governmental expenditures in the major sectors and offices, for these subjects proposed under the Provincial list (from the Local authorities expenditures and % of the Central bodies as from the 2010 Final Accounts as example for what would be the expenditures of the provinces' in order to make rough estimates using 2010 data as the baseline assuming that the major expenditures in these entities will occur at the province level due to the transfer of functions to them except for Policy, Standardization, and M&E functions performed by the Federal Bodies. Therefore, a percentage (100, 75%, or 50% (where indicated) of recurrent Budget will be transferred to Province and all Development Budgets (Source of original Data, MoF, http://www.mof.gov.ye/files/f_account/2010/data/c/s/as.pdf									
Part 1: Institutions to be decentralized and therefore their resources to be divided to the regional governments									
		1	2	3	4	5	6	7	8
Sector	Type/ organization	Recurrent Central 2010 Actual Salaries	Goods and Services		75% (or 50%) from (1+2+3)	Development Budget of the central budget chapters (4+5)	Total expenditures to transfer	Total Local Expenditures 2010	Total 5+6 (requirements of the Provincial gov)
Water	Ministry of Water 75%	75,014,863	42,306,669	988,281,223	829,202,066	25,873,976,678	26,703,178,744	261,349,081	26,964,527,825
	The Water Resources Public Authority 75%	123,026,655	24,848,243		110,906,174	639,229,632	750,135,806		750,135,806
Environment	The public authority for Environment protection 75%	97577045	31,783,277	4,545,396	100,429,289	28,673,115	129,102,404		129,102,404
Law Enforcement	Ministry of Justice 75%	8,512,673,180	-		6,384,504,885		6,384,504,885		6,384,504,885
	Supreme Court 75%	979,030,222	-		734,272,667		734,272,667		734,272,667
	Public Attorney 75%	4,763,351,606			3,572,513,705		3,572,513,705		3,572,513,705
	Ministry of Interior 75%	72,067,054,790	18,424,836,761	6,733,921,828	72,919,360,034	2,543,445,622	75,462,805,656		75,462,805,656
	Traditional Tribal Affair Depart (100 %)	1,721,591	8,199,126	2,067,464,938	1,558,039,241		1,558,039,241		1,558,039,241
	Human Right Ministry 75%	69,476,576	106,535,766	3,200,000	179,212,342		179,212,342		179,212,342
Public Admin	Civil Services 75%	571,970,711	122,313,559		520,713,203		520,713,203	1,275,978,702	1,796,691,905
	MOLA				-		-	20,282,635,970	20,282,635,970
	MOF 75%	2,165,372,523	599,244,583		2,073,462,830		2,073,462,830	5,097,397,381	7,170,860,211
	MOPIC 50%				249,569,900	15,814,248,316	16,063,818,216	603,464,357	

		346,958,413	152,181,386						16,667,282,573
Social affairs	Ministry of Labor and Social Affairs 75%	217,217,346	125,526,946	43,292,738,060	32,726,611,764		32,726,611,764	1,889,214,086	34,615,825,850
	Expatriate affairs Ministry 100%	115,703,455	99,038,017	9,033,501	22,377,497,300		22,377,497,300	115,396,176	22,492,893,476
Education Agencies (Basic and Secondary)	Ministry of Education 75%	2,121,959,331	11,569,629,325		10,268,691,492	7,848,416,851	18,117,108,343	#####	231,824,166,363
	Ministry of Technical and Vocational education (local authority budget)				-		-	4,751,759,363	4,751,759,363
Health	Ministry of Health 75%	2,124,062,272	5,598,110,277	9,529,316,480	12,938,616,772	11,206,905,287	24,145,522,059	44,154,051,270	68,299,573,329
	Youth and sports 75%	509,494,375	132,542,700	16,287,431	493,743,380	1,185,991,266	1,679,734,646	1,570,933,285	3,250,667,931
Culture	Ministry of Culture 75%	272,548,620	359,154,661	89,670,564	541,030,384	87,218,335	628,248,719	961,934,264	1,590,182,983
	Ministry of Endowment (Irshad Department)						-	955,917,579	955,917,579
	Ministry of Tourism 75%	127,386,722	481,076,752	10,662,375	464,344,387	943,948,874	1,408,293,261	442,001,927	1,850,295,188
	Public Authority for Heritage 100	484,174,186	48,845,348	2,336,936	401,517,353	72,704,559	474,221,912		474,221,912
	Public Authority for (Historical) cities Maintenance 100%	100,246,122	27,641,170	6,535,578	134,422,870	39,971,213	174,394,083		174,394,083
	Ministry of Media						-	391,479,885	391,479,885
Public Works	Ministry of Public Works 75%	19,003,051	152,198,119	1,153,540	129,266,033	80,580,735,110	80,710,001,143	27,174,982,694	107,884,983,837
	Urban Planning, Survey, and Land Authority 75%	1,219,187,060	354,545,514	2,848,100	1,182,435,506	1,277,961,928	2,460,397,434		2,460,397,434

Agriculture	Ministry of Agriculture and Irrigation 75%	846,008,715	196,441,193	2,217,774,552	2,445,168,345	939,400,946	3,384,569,291	6,016,242,638	9,400,811,929
Economic Sector	Ministry of Fisheries 75%	98,775,747	107,404,870	534,560,810	555,556,070	1,705,018,554	2,260,574,624	997,490,069	3,258,064,693
	Ministry of Petroleum and Minerals 50%	1,760,429,530	40,582,744,330		21,171,586,930		21,171,586,930	258,722,316	21,430,309,246
	Ministry of Trade 50%	2,909,849	102,512,679	739,426,431	422,424,480		422,424,480	1,170,607,591	1,593,032,071
	Ministry of Transportation 50%	91,349,478	53,586,370	232,758,077	188,846,963	631,400,856	820,247,819	288,644,487	1,108,892,306
	Ministry of Telecom 50%	74,311,617	12,342,665	19,567,762	79,666,533		79,666,533	19,659,295	99,325,828
	Ministry of Electricity 50%	53,150,110	21,542,223		56,019,250		56,019,250	21,937,638	77,956,888
Totals					#####	151,419,247,142	347,172,860,034	#####	679,581,718,108

Part 2: Other Administrative Agencies to be set up in the provincial Level (By using the central agencies expenditures for FY2010 as benchmark)

Name	Note	Total expenditures 2012	Estimated Number of provinces	Costs					
Prime Minister Office	4 offices each may need similar amount at least	4,075,253,930	4	16,301,015,720					
Parliament	4 provincial Houses, each may need similar amount	4,450,611,082	4	17,802,444,328					
Central Organization for Control and Auditing	4 organizations may need similar amount for all	4,233,754,597	1	4,233,754,597					
Central Statistics Organization	4 offices each may need similar amount at least	773,352,072	4	3,093,408,288					
Tax/revenue Department	4 organizations may need similar amount at least	6,825,579,655	1	6,825,579,655					

High Tender Board	4 offices each may need similar amount at least	2,335,201,694	4	9,340,806,776					
Ministry of Legal Affairs	4 offices each may need similar amount at least	661,546,392	4	2,646,185,568					
Provincial, Planning Finance, Economic, Commissions	Estimation	2,000,000,000	4	8,000,000,000					
Subtotal Total									68,243,194,932
Grand Total of Expenditures estimated to be the minimum costs need for Regional Governments (without the Independent Funds and SOEs)									747,824,913,040
Estimation of Revenues that are under Las law 40 and these under the Provincial Legislative List (using the Local authorities revenues from their own sources for 2010, plus Taxes for the same year as it is going to be for the Provincial Gov									
Description		amount	Total	Source					
Local authorities revenues from their own sources for 2010			8,045,505,068	local authorities final accounts 2010					
Joint General Revenues			3,837,749,327						
Property Tax			5,084,670,220	Note on property Tax					
Tax on Services (1-51)									
	Tax on Sales of landlines and cellular Phones services	11,586,325,140		Cosolidated final accounts 2010, central resources					
	Tax on Restaurant and Hotels	176,052,162							
	Tax on other services	1,935,221,181							
	Tax on usage of telecom	2,899,299,415							

	equipment								
	Tax on Vehicles		1,125,666,552						
	Tax on Fuels (Excise)		22,215,795,302						
	Sub total		39,938,359,752	39,938,359,752					
Income from Property and sales of goods and services	Fees on Planning and consultations		11,593,880						
	Revenues from Fisheries		926,700,755						
	revenues from selling printed governmental vouchers		2,239,273,911						
	Judiciary fees		36,883,106	3,214,451,652					
Grand total revenues estimated				60,120,736,019					60,120,736,019
Tentative Estimated Gap in the Provincial Governments Budgets									687,704,177,021
%									92%